

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,679

MILTON NIPOORT,

United States Court of Appeals
For the
District of Columbia Circuit
FILED OCT 13 1958

Joseph W. Stewart
CLERK

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

152

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

WILLIAM E. OWEN

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Counsel for Appellant.

QUESTIONS PRESENTED

1. Was the government's evidence sufficient to prove that the alleged crime was not the product of a mental disease, defect or abnormality, beyond a reasonable doubt?
2. Did the court err in admitting the testimony of the government witness, Dr. David A. Owens?
3. Did the court err in interdicting prejudicial comment and attitude concerning the government's expert witness, Dr. David Owens?
4. Did the court err in refusing to instruct the jury:
"You the jury are instructed that although a non-expert witness testifies that he has never observed an abnormal act on the part of the accused, this testimony is of no value unless that witness had a pro-longed and intimate contact with the accused?"
5. Did the court err in refusing to instruct the jury:
"You members of the jury are instructed that non-expert testimony as to mental conditions of the accused should be received cautiously and scrutinized with care in the face of contradicting expert opinion?"

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UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 14, 679

MILTON NIPOORT,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The appellant was indicted, tried, convicted and imprisoned for violation of Title 22, D.C. Code, sections 2901, 3204. Notice of appeal to this Court was filed. (J. A. 155). Jurisdiction of this Court to review the proceedings below is found in Title 28, United States Code, section 1291, 1952 Ed.

STATEMENT OF CASE

The appellant was indicted for violation of Title 22, D. C. Code, section 2901, 3204, 1951 Ed. He entered a plea of not guilty at arraignment. Defense counsel informed the prosecutor that an insanity defense would be likely. On 17 February, 1958, upon motion of the government, an order was signed committing him to St. Elizabeths Hospital for mental examination. (J. A. 2). On March 21, 1958 there was transmitted, and placed in the court records, a letter from the Superintendent of the St. Elizabeths Hospital to the Clerk of the District Court. This letter stated that the hospital could form no valid opinion as to the defendant's mental condition. (J. A. 3-4). On April 3, 1958, the defendant, by court order, was returned to the District Jail to await trial.

At the trial the defendant introduced evidence to raise the issue of insanity at the time of the alleged offense by presenting the testimony of a well known professional psychiatrist who stated that the defendant, in his opinion, was at the time of the commission of the offense, suffering from serious mental diseases, defects and abnormalities. This psychiatrist explained that he formed this opinion as a result of personal examinations of the defendant as well as data supplied by the family. (J. A. 47-71). The defendant's brother, a member of the Bar of a neighboring jurisdiction, testified at length as to the accused's behavior through the years, and expressed an opinion that the defendant was mentally ill at the time of the commission of the crime. (J. A. 72-79). The Superintendent of St. Elizabeths Hospital testified that the official Hospital opinion was still that as contained in the letter dated March 21, 1958; namely, that they could form no valid psychiatric opinion, and that this conclusion reflected the combined thoughts of his staff.

In an effort to prove the appellant's lack of mental disability beyond a reasonable doubt in the face of the strong showing to the contrary adduced by the defense, the government produced the testimony of five lay witnesses, over defense objection, mostly police officers, who

stated that in their opinion they had observed the defendant do nothing abnormal. All of these lay witnesses had very limited contact with the accused, and had never seen him before their connection with him in this case. The witnesses and the time spent with the accused in order to form an opinion as to his mental competency are as follows:

Helen D. Tsintolas	20 or 25 minutes. (J. A. 24-25)
John Auld	approximately 45 minutes. (JA. 33-36)
Louis Blancato	approximately 8 hours. (J. A. 37-38)
Joseph Judd	16 minutes. (J. A. 40-41)
Joseph Bonaccorse	7 hours. (J. A. 43-44)

In addition to these five lay witnesses the only other witness produced by the prosecution which bore on the mental competency of the accused was Dr. David Owens, the youngest and most inexperienced member of the staff at St. Elizabeths Hospital, who, without advance notice of any kind, and over the objection of the defense, testified inconsistently with the previously filed official staff opinion of the hospital, and inconsistently with his own notes in the case which were produced by compulsory process. (J. A. 3-8, 82-118).

The trial judge instructed the jury, omitting two requested defense instructions, specifically denying them, and the case was submitted. The jury convicted, and the defendant was sentenced to imprisonment.

STATEMENT OF POINTS

I

The government failed to prove mental competence of the accused to commit the alleged crime charged in the indictment.

II

The court erred in admitting the testimony of the government psychiatrist, Dr. David Owens.

III

The court erred in interdicting prejudicial comments and attitudes concerning the testimony of the government witness, Dr. David Owens.

IV

The court erred in refusing to instruct the jury:

"You the jury are instructed that although a non-expert witness testifies that he has never observed an abnormal act on the part of the accused, this testimony is of no value unless that witness had a pro-longed and intimate contact with the accused."

V

The court erred in refusing to instruct the jury:

"You members of the jury are instructed that non-expert testimony as to mental conditions of the accused should be received cautiously, and scrutinized with care in the face of contradicting expert opinion."

SUMMARY OF ARGUMENT

I

The question of mental sufficiency to commit the alleged crime was properly raised in the court below. In an effort to meet its burden of proof in regard thereto, the government presented the testimony and opinion of five lay witnesses and one expert witness. As a matter of law the five lay witnesses were improperly heard as to their conclusions of mental health inasmuch as none had prolonged and intimate contact with the accused. Nor should the doctor from the St. Elizabeths Hospital have been permitted to testify inconsistently with a former official opinion of that institution filed in the case. (J. A. 3-4).

In any event the nature and quantity of such evidence of sanity was insufficient to prove the element of mental competence beyond a reasonable doubt in the light of appellant's lay and expert opinion to the contrary.

II

The appellant was prejudiced when the court permitted professional testimony from an official of the St. Elizabeths Hospital to change the previously filed report on mental condition, and to testify contrary to what the defendant had a right to understand was the position to be taken by the government at trial. This surprise made it impossible for the defendant to present his defense to meet such unknown prosecution tactics by way of additional expert opinion, pre-trial discovery, etc.

III

Realizing the inherent weakness and apparent inconsistency in the government's attempt to change its official conclusion as to the defendant's mental health at the last minute, the court commented and indicated in a partial and prejudicial fashion so as unfairly to bolster the position and testimony of this crucial prosecution witness.

IV

The law in this jurisdiction is clear that before a non-expert witness may testify that he or she has never observed an abnormal act on the part of the accused, such witness must have had a prolonged and intimate contact with the accused. Lay opinion in this field is valueless without such substantial knowledge of the subject. No such understanding of the defendant was indicated by any of the five lay witnesses extending their opinions in this case.

V

Although non-expert views and conclusions in psychiatric matters may be of great value, it is dangerous to put them on a parity with expert conclusions in the same case. A moment's reflection will show that a cautionary instruction should be granted as to such lay testimony where it is to be compared with conflicting expert opinions.

A R G U M E N T

I

"It is not questioned that, when the defendant introduces some evidence to raise the issue of insanity, his sanity at the time of the offense becomes an element of the crime, which like all other elements of the crime, must be proved by the Government beyond a reasonable doubt. (citations deleted). When the Government has not sustained its burden of proof, i.e., when it appears that reasonable jurymen could not conclude beyond a reasonable doubt that the act was not the product of defendant's mental illness, 'there is a duty to set aside a verdict of guilty and to direct a verdict of not guilty by reason of insanity' or to order a new trial." Wright v. U. S. _____ U. S. App. D. C., _____ F 2d _____, (decided October 30, 1957.)

The nature and quantum of evidence of sanity produced in this case was unsatisfactory to support an intelligent jury decision. The lay witnesses who paraded to the stand to explain that in their official opinion the crime was not the product of a mental illness because they didn't observe any contradicting actions by the accused, were all incompetent to so testify according to the pertinent law of evidence as understood by appellant. None of these persons had been exposed to the defendant for over several hours in the usual course of their business, and one for only sixteen minutes. As annotated hereafter in section IV, such negative lay testimony to prove an affirmative mental condition is of value to the court and jury only when the witness had prolonged and intimate contact with the accused.

Even if it were technically admissible, such guess-work is hardly enough to sustain decisions by a reasonable person as to the weightier and more important matters of life, or, to eradicate a reasonable doubt as to correctitude.

The testimony of the one prosecution medical witness is uniquely valueless in the light of the prevailing circumstances. As explained in the succeeding section, the defense was taken by surprise when the one doctor from St. Elizabeths Mental Hospital stepped to the stand to state that he had been able to clinically investigate the mind of the

defendant during the court granted mental inquisition period and to arrive at a valid psychiatric conclusion, when that institution had already reported to the court before trial that it had been impossible to make an intelligent or valid psychiatric diagnosis because of recalcitrance or lack of cooperation.

The institution superintendent testified for the defense to reaffirm his previous report to the Court concerning professional inability to render a valid opinion.

In considering this question, as to which expert appraisal of the situation should be believed or accepted, weight should be given to respective age, experience, knowledge, etc. As was stated by Judge Schweinhaut in a recent similar case:

"Now, the testimony of Dr. Owens and
But I believe I must consider with respect to their testimony, the fact that each of them has only been over there about two years, as a matter of fact has been only two years in the field of psychiatry, and they cannot be, I think, therefore, accorded quite the same value as the testimony of the other doctors who are much in years and experience their seniors." Leach v. Overholser, Habeas Corpus No. 33-58, U. S. District Court for the District of Columbia.

The questionable setting for this surprise testimony can better be seen by reference to defendant's exhibit (J. A. 7), showing that a personal call was made to the hospital by the prosecutor in an effort to find a witness who would be willing to contradict the previous report from Dr. Overholser.

Also to be considered in deciding whether the self-contradicting and baseless view of a psychiatric neophyte should be judicially heard in these circumstances are the warnings and guides contained in Fielding v. U. S., ____ U. S. App. D. C. ____, F 2d ____, (decided December 23, 1957):

"Since Douglas we have had occasion to observe that there may be deficiencies in the process by which we collect the evidence upon which cases like this turn; that the psychiatric examinations upon which the expert witnesses'

testimony is based may be 'inadequate in that they do not gather enough information to pinpoint the origin of the illness', that 'the facts required by way of psychiatric testimony are a 'description and explanation of the origin, development and manifestations of the alleged disease. . . how it occurred, developed, and affected the mental and emotional processes of the defendant. . .' and that 'the examinations conducted by the psychiatrists must be of a character they deem sufficient for the purpose of determining the facts required.' "

By that language, Dr. Owen's opinion was clearly inadmissible.

According to the prosecution doctor, his conclusion was based on objective observation of the patient. According to Dr. Overholser, a valid evaluation cannot be made without communication. (J.A. 119-131).

Not to be overlooked in assessing value, or lack of it to the testimony of Dr. Owens, are the records of the hospital during the patient's stay. One such contemporaneous notation indicated that the same doctor said he thought it was a case of "schizophrenia". (J.A. 7)

II.

There was an order signed committing this defendant to St. Elizabeths Hospital for examination on February 17, 1958 at the request of the government. In the course of due time the hospital informed the lower court by way of letter dated March 21, 1958, and addressed to the Clerk's Office for filing, that no valid opinion could be reached as to the mental condition of the defendant. (J.A. 3-4). This letter was placed in the court jacket and became a part of the record in the case. Defense counsel were aware of it, and in fact were advised of its contents by the prosecutor. As can be seen, the letter purports to speak for the hospital over the signature of Dr. Winfred Overholser. It is contended that defense counsel had a right to rely on it, and to assume that the hospital opinion would be consistent with it. The defense of insanity was prepared and presented with a view that the government's previously announced stand would not be altered after the trial had commenced.

Instead of producing the author of the letter, the contents of which were given to the defense attorneys, the prosecution presented Dr. David Owens, a member of the staff of the hospital, who testified inconsistently with the official staff opinion. His testimony was objected to, and admitted over objection.

The presentation of the defense was prejudiced by this move of the prosecution. If it had known that the government was going to attempt to contradict its previously elicited opinion, the appellant would have produced more expert testimony of his abnormal mental condition. It was felt that since the government was not planning to produce any expert opinions as to the mental condition of the accused, that the testimony of Dr. Miller for the defense would be intelligently sufficient from the defendant's position. Other expert testimony had been planned by the defense until the government's report was filed to the effect that they would be unable to render a valid opinion. It was then abandoned as thereby unnecessary; merely cumulative and time consuming.

This unprecedented action on the part of the prosecution was contrary to the requirements of fair play inherent in the due process clause of the Constitution. To argumentatively turn the tables, there is no burden on the defense in this jurisdiction to inform the prosecution of an intended insanity defense; appellant could have waited until the defense rested its case of corpus delecto proof, and then surprised the government by a confession of the facts and psychiatric evidence. This would be unfair, but for the defense to file affirmative pre-trial statements indicating a contrary intention and then to secretly switch tactics during the trial would not be permitted by any Court. Such unfair advantage should not be permitted by the prosecution!

This highly improper tactic of the prosecution further prejudiced the defendant in making it impossible to employ pre-trial discovery techniques. Pre-trial understanding of the psychiatric machinations behind the official St. Elizabeths report to the Court was essential to the defendant to adequately meet the surprise testimony of Dr. Owens.

III

Appellant felt that the lower court judge sensed the precariousness of the government's unfortunate effort to contradict itself through logically tenuous sophistry, and tried to buttress it with partial comment, interrupting questions and unrequested rulings.

When direct questioning of Dr. Owens reached the crucial point as to the defendant's mental condition on the previous date of the crime, both judge and prosecutor asked leading questions, which finally brought answers apparently satisfactory to the government: (J. A. 89)

*"A. I think that would be extremely difficult to say with certainty. However, my feelings are that had a mental disease or defect been present at that time he would have shown some symptom or indication on February the 24th and subsequent to that.

" Q. What you are saying if there was a disease or defect in existence on December 16, 1957, that in your opinion you would have found some evidence of it during the time he was in the hospital?

A. That is correct.

THE COURT: Does that add up in your opinion that there was no disease or mental defect on December 16, 1957?

THE WITNESS: That is my opinion, yes, sir."

Effectiveness of attorney to witness cross-examination as a truth determiner was hampered by the Court's effort to clarify an already clear question during an intense stage of examination: (J. A. 101)

" Q. And what opinion did you give him?

A. I think he asked Dr. Cody and Dr. Cody said I was more familiar with Mr. Niport's case and --

Q. I am not asking what he said to Mr. Cody.

THE COURT: Now, understand. When he was talking to you what your opinion was.

THE WITNESS: That he was without mental disorder.

THE COURT: You gave him that as your opinion?

Before hearing his testimony the Court said of Dr. Owens connection with this matter, that, we must assume he was working as an agent or under the auspices of Dr. Overholser, or an agent of the hospital. (J.A. 86). After it was made to appear that the doctor was being used to explain away the effect of the hospital report, the court interrupted counsel's cross-examination to say: (J.A. 102)

"Q. As an agent of the hospital or as an individual mental expert?

THE COURT: I think we have to assume as a psychiatrist and doctor that that was the basis for your opinion, isn't that correct, Doctor?

THE WITNESS: Yes, sir, that is the basis."

During perfectly proper defense examination, reviewing a telephone call previously testified to by the witness, the Court usurped in the following manner: (J.A. 102)

"A. We didn't discuss the letter. I knew the letter had been sent.

Q. Did you suggest how you would correct the apparent inconsistency?

THE COURT: Now, ladies and gentlemen, you will ignore that."

At one point the Court questioned to meet with a "that is correct" answer as follows: (J.A. 107)

"THE COURT: Now, Mr. Owen, excuse me a minute. You are making that sort of double barreled.

Now, Doctor, and correct me if I am wrong, because I think the jury should understand this. You say that he was cooperative in the physical examination but was uncooperative at the time of the consultation in so far as the mental examination was concerned?"

Throughout his cross-examination this witness was judicially protected when such action was improper: (J.A. 108)

"Q. And the worst ones are transferred down to ward 4? That is the ward you say--

THE COURT: Excuse me. He said it was not the worst ward."

And again, (J. A. 108, 110)

"Q. Well, what did you find in this man to counteract these facts that indicate that he could be emotionally disturbed?

THE COURT: I think he stated that he found no symptoms of anything abnormal and therefore concluded he was of sound mind. Is that correct, sir?

THE WITNESS: Yes, sir. That is correct."

And again, (J. A. 110)

"Q. You wouldn't know whether they were planning to overthrow the government or whether they were talking about the weather, would you?

THE COURT: If he didn't hear them he certainly wouldn't."

And again, (J. A. 111)

"Q. I thought you said that he refused to talk and pouted?

THE COURT: His brother so stated to him and he recited it here."

And again, (J. A. 112)

"Q. But you didn't think he was very bad off when you saw him?

THE COURT: You said in your opinion he was of sound mind, sir?

THE WITNESS: Yes, sir."

See also J. A. pages 114 for further unwarranted judicial assistance.

How well a witness has answered a question is not for the Court to decide, nor is it proper for a court to comment on whether a witness' explanation is as clear as can possibly be. (J. A. 116).

The court's attitude of disfavor with the appellant's attempts to defend against the surprise move by the prosecution was clear in the following attempt to disparage: (J. A. 127)

"Q. Did you know before testifying today, Doctor, that this record of Mr. Lowther's call for help to St. Elizabeths was in the record of your hospital?

THE COURT: Now, let's be fair, Mr. Owen, about some things, at least.

As a matter of fact, as you know as a lawyer of many years experience that the defense counsel gets witnesses, Government counsel gets witnesses, Defense counsel talks to witnesses and Government counsel talks to witnesses and Ladies and Gentlemen the most horrifying experience in the world is when neither counsel do speak to witnesses. That is what prolongs the process of justice because if you don't speak to them that delays the process of law.

That is a perfectly proper thing for the District Attorney to get a witness to testify as you did Dr. Miller, sir. I don't know what you are indicating, Mr. Owen.

MR. OWEN: I would object to the court's characterization of counsel's presentation of his case.

THE COURT: The record will speak for itself, of course. I am asking you a question now and as an officer of the court I expect an answer and that will be reflected on the record, too, sir.

What are you getting to? What is your purpose?

MR. OWEN: I would like to know, sir, who else over at St. Elizabeths was asked if they would come and testify other than Dr. Owens?

THE COURT: Do you know, sir?

IV

"Although the testimony of lay witnesses may be competent evidence on the issue of sanity, it does not follow that in the face of a substantial showing of insanity, the Government may send the issue to the jury simply by having two policemen testify, 'He looked all right to me.' The probative value of any opinion on the issue of sanity depends on the facts upon which it is based. This is especially true of a lay opinion. Lay witnesses may testify as to their own observations and may then express an opinion based upon those observations. Of course the testimony of a lay witness with training in this or related fields may have more value than the testimony of a witness with no such training. Also, obvious upon a moment's reflection is the fact, that, while a lay witness's observation of abnormal acts by an accused may be of great value as evidence, a statement that the witness never observed an abnormal act on the part of the accused is of value, if, but only if, the witness had prolonged and intimate contact with the accused." (emphasis supplied) Carter v. U. S. U. S. App. D. C. _____, F.2d _____ (decided October 24, 1957); Wright v. U. S. U. S. App. D. C. _____, F.2d _____ (decided October 30, 1957).

Also in Fielding v. U. S., _____ U. S. App. D. C. _____, F.2d _____, (decided December 23, 1957) this Court adopts the above language as follows:

"... What we have said elsewhere about an opinion of sanity expressed by an untrained lay witness having no prolonged and intimate contact with the accused disposes of the testimony of the policemen in this case."

In the instant case the prosecution, attempting to disprove the strong showing of insanity by the defense, produced five lay opinions. Four of these witnesses were police officers who played some part of the apprehension of the defendant. One was the victim of the crime herself. None of the five had any contact whatsoever with the defendant prior to his involvement in this robbery. The witness Tsintolas, the victim of the robbery, said that she had observed the defendant for a total of 20 or 25 minutes during which time she testified the crime took place. She states that in her opinion he was of sound mind. (J. A. 24-25).

The next lay opinion was by John Auld, a police officer from Baltimore, Maryland, who testified that he observed the defendant for approximately 45 minutes and that he did not notice any abnormality about his actions. (J. A. 33-36).

Detective Louis Blancato of the Metropolitan Police Department testified that he arrived in Baltimore, Maryland on December 20, 1957, and first saw the defendant at about 5:30 P. M. , returned him to Washington Police headquarters at 11:45 A. M. (J. A. 37-38). He stated that he has seen exactly 137 people who have been disturbed emotionally and that in his opinion he saw the defendant do nothing abnormal. Officer Joseph Bonaccorsey of the Metropolitan Police Department was in the company of the defendant and Detective Blancato for the same period, the two officers being the ones who went from Washington, D. C. to Baltimore, Maryland to transport the defendant to the District. Sergeant Bonaccorsey states that he has seen 50 persons in his career who were of unsound mind and that there was nothing abnormal or unusual about the way the defendant acted in his presence. (J. A. 43-44).

Sergeant Joseph Judd of the Baltimore Police force expressed the opinion that the defendant was definitely of sound mind and that his total contact with the accused was for a total of sixteen minutes. (J. A. 40-41).

As can be readily ascertained, these opinions as to soundness of mind hardly can qualify as being the product of pro-longed and intimate contact with the accused. There was objection made at the trial to all of their opinions as to the mental competency of the accused. The objections were overruled.

The trial judge was requested to instruct the jury as follows:

"You the jury are instructed that although a non-expert witness testifies that he has never observed an abnormal act on the part of the accused, this testimony is of no value unless that witness had a pro-longed and intimate contact with the accused." (J. A. 9)

It is urgently submitted to this Court that the trial judge committed prejudicial error when he declined to so instruct, especially since four of the five lay witnesses were police officers and have something more attached to their testimony in the eyes of the average juror, than someone unconnected with the litigation.

V

The trial judge was specifically asked in writing to instruct the jury as follows:

"You members of the jury are instructed that non-expert testimony as to mental conditions of the accused should be received cautiously and scrutinized with care in the face of contradicting expert opinion." (J. A. 9)

This request was denied. It is urged that the denial of this instruction in this case amounted to prejudicial error, in that the jury was never adequately made aware that there is a difference between expert opinions and lay opinions, in this field. It is utterly ridiculous to assume that the jury should receive the type and calibre of lay opinion as was presented in this case on behalf of the prosecution and not be told that an expert opinion based on examination over an extended period by a recognized psychiatrist using recognized techniques should not have more weight than police officers, untrained in the field, and with the limited contact with the defendant as was had in this case. To say otherwise is to a great degree, dissipating the value of professional opinions.

It has been learned over the years, that when considering certain types of testimony, it is beneficial to admit the testimony, for what it is worth, and then explain to the jury that it is not the best evidence available, but that it was given to them for their consideration, and if after careful scrutiny they feel that it may be useful they can consider it. This theory has developed in the law with regard to informer's testimony, Fletcher v. U. S., 158 F.2d 321, 81 U. S. App. D. C. 306; co-defendant's and accomplice testimony, Egan v. U. S., 287 F 985, 52 U. S. App. D. C. 384; and in a great many jurisdictions with regard to the distinction between oral and written confessions. Jackson v. U. S., 198 F.2d 497, 91 U. S. App. D. C. 60.

It is felt that this requested charge was very important in this case because of the type and grade of testimony introduced as to the issue of sanity. The defense presented the testimony of a recognized expert in the field, lay testimony of the accused's brother, who had close contact with him from birth, and Dr. Winfred Overholser, the Superintendent of St. Elizabeths Hospital who was speaking for himself and the doctors of the staff who comprised the staff conference. The former two explained their reasons why they felt the defendant was suffering from a mental disease, defect or abnormality. Dr. Overholser explained that he and the staff could come to no valid opinion. This was after the defendant was committed to their custody for a period of approximately sixty days.

The prosecution presented Dr. David Owens, whose testimony is discussed fully in Argument II, and the five lay witnesses discussed in Argument IV.

It is respectfully submitted that to allow this type of lay testimony to go to a jury in a case where the issue is so close without the requested precautionary charge, is to place the entire field of professional expert psychiatric testimony on a par with uninformed and ignorant guesswork.

Respectfully submitted,

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JOINT APPENDIX

319 [Filed Jan. 20, 1958]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled October 31, 1957, Sworn in on November 5, 1957

The United States of America	:	Criminal No. 31-'58
	:	
v.	:	Grand Jury No. 5-58
	:	
Milton Niport	:	Robbery, Carrying a Dangerous
	:	Weapon (22 D.C.C. 2901,
	:	3204)

The Grand Jury charges:

On or about December 16, 1957, within the District of Columbia, Milton Niport, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and immediate actual possession of Helen D. Tsintolas, property of the Tsintolas Realty Company, a body corporate, and Helen D. Tsintolas, of the value of about \$460.00, consisting of the following: \$456.00 in money, property of the Tsintolas Realty Company, a body corporate; \$4.00 in money, property of Helen D. Tsintolas.

SECOND COUNT:

On or about December 16, 1957, within the District of Columbia, Milton Niport did carry, openly and concealed, on or about his person, a dangerous weapon, that is, a pistol.

/s/ Oliver Gasch

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Franklin M. Aaronson

Foreman.

320 [Filed Jan. 24, 1958]

PLEA OF DEFENDANT

On this 24th day of January, 1958, the defendant Milton Niport, appearing in proper person and by his attorney Daniel T. Donohoe, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

Deft. remanded to the D. C. JAIL.

By direction of

Alexander Holtzoff

Presiding Judge
Criminal Court #3

Present:

HARRY M. HULL, Clerk

United States Attorney

By /s/ Irene B. Burroughs
Deputy Clerk

By H. Titus
Assistant United States Attorney

R. Gore
Official Reporter

324 [Filed Feb. 17, 1958]

ORDER

This cause having come on for consideration upon the motion for mental examination of the defendant, and it appearing that the defendant may be presently of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, it is by the Court this 17th day of February, 1958,

ORDERED that the defendant be committed to Saint Elizabeths Hospital for a period not to exceed thirty days to be examined by the psychiatric staff of said hospital. The Superintendent of said hospital, upon completion of said examination, is directed to file with this Court a written report of the examination, pursuant to Title 24, Section 301, District of Columbia Code, 1951 Edition, as amended August 9, 1955, which shall express the opinion of the Superintendent of said hospital as to whether the defendant is of unsound mind or is mentally incompetent

so as to be unable to understand the proceedings against him or properly to assist in his own defense, and in the event there is no bed immediately available for this defendant at Saint Elizabeths Hospital, he is to be confined in the District of Columbia Jail until such time as a bed becomes available in that institution, and it is

FURTHER ORDERED that upon receipt by the Court of the report of the Superintendent, the United States Marshal or his designated deputy is hereby authorized to bring the defendant, Milton Niport before this
 325 Court for such further proceedings in this matter as may be necessary, or in the event the hospital report indicates that the defendant is competent to stand trial, the United States Marshal or his designated deputy is hereby authorized to transport the defendant to the District of Columbia Jail to await further action of this Court.

/s/ Bolitha J. Laws
 JUDGE

326 [Filed March 22, 1958]

DEPARTMENT OF
 HEALTH, EDUCATION, AND WELFARE
 SAINT ELIZABETHS HOSPITAL #75,841
 WASHINGTON 20, D. C.

Re: Milton Niport
 March 21, 1958

The Clerk
 United States District Court
 for the District of Columbia
 United States Courthouse
 Washington 1, D. C.

Dear Sir:

Mr. Milton Niport (Criminal Number 31-58) was committed to Saint Elizabeths Hospital February 24, 1958, upon an order signed by Chief Judge Bolitha J. Laws, for a period of not to exceed thirty days to be examined by the psychiatric staff of Saint Elizabeths Hospital. It was further ordered that the Superintendent of Saint Elizabeths Hospital file a written report of the examination pursuant to Title 24, Section 301,

District of Columbia Code, 1951 Edition, as amended August 9, 1955, expressing an opinion as to the defendant's mental condition.

Repeated attempts have been made to examine Milton Niport since the date of his admission to Saint Elizabeths Hospital, but he has been so uncooperative that we have been unable to perform adequate examinations upon which to base a valid opinion as to his mental competency. The examinations are inadequate and incomplete because of his refusal to cooperate in such examinations. On March 18, 1958 Mr. Niport was brought before a medical staff conference and refused to say a single word. There was nothing to indicate that this was the muteness of a psychotic patient and it was the unanimous opinion of the physicians present that it was a conscious refusal to answer questions or cooperate in anyway with the examination. There has been no improvement in this patient's attitude since his admission and nothing to indicate that he will become any more cooperative if his commitment is extended beyond the stipulated thirty day period. Mr. Niport's behavior on the ward, as reported by supervisors, nurses and psychiatric aides has been relatively normal: talks to and associates with other patients, plays cards with them, does not behave in a bizarre or peculiar manner and asks for any thing that he wants.

We regret that Milton Niport's lack of cooperation makes it impossible for us to form a valid opinion as to his present mental condition
327 or competency for trial.

Sincerely yours,

/s/ Winfred Overholser, M. D.
Superintendent

cc: United States Attorney
for the District of Columbia
United States Courthouse
Washington 1, D. C.

329 [Filed April 3, 1958]

ORDER

It appearing to the Court that on February 17, 1958, the defendant was ordered committed to Saint Elizabeths Hospital for a period not to exceed thirty (30) days to be examined by the psychiatric staff of that hospital, pursuant to the provisions of Title 24, Section 301, District of Columbia Code, 1951 Edition, as amended August 9, 1955, and it further appearing that on March 21, 1958, the Superintendent of Saint Elizabeths Hospital certified to the Court that the defendant's "lack of cooperation makes it impossible for us to form a valid opinion as to his present mental condition or competency for trial," it is by the Court this 3rd day of April, 1958,

ORDERED that the above-mentioned order of commitment, dated February 17, 1958, be set aside and vacated, and that the United States Marshal or his designated deputy is hereby authorized to bring the defendant, Milton Niport, from Saint Elizabeths Hospital to the District of Columbia Jail to await trial herein.

/s/ Alexander Holtzoff
JUDGE

344 [Filed Sep. 18, 1958]

Defts. Exhibit No. 1 ~~(ID)~~

MILTON NIPORT

Age:	24 (Born March 4, 1933)
Date of Admission:	February 24, 1958
Charges:	Robbery and Carrying a Dangerous Weapon Offense occurred December 16, 1957 - about 1:30 P.M. (real estate office). Arrested December 30, 1957
Discharged:	April 3, 1958 (Undetermined)
Admission Conference:	March 18, 1958 (Doctors Tartaglino, Cushard, Cody, Owens, Platkin, Read and Rev. Rost, Father William Dickerson (Psychology Dept.) and Mr. Levin (Social Service Dept.).
Diagnosis:	Not Yet Diagnosed.

Patient refused to come to conference. I went to his room and only with reluctance did he finally come. Did not speak a word; refused to answer any questions. Had been observed to be talking on ward, playing cards, came on administrative call with requests. Prior to conference he was reported as quite arrogant on the ward and demanding.

Long antisocial history beginning with arrest in 1949 for larceny and numerous arrests since then. Discharged from Air Force as unsuitable and under conditions other than honorable. Served from March 8, 1950 until December 8, 1951; 4 court martials (failure to obey an order two times, breaking restrictions and possession of Marihuana). Spent about 13 months of 19 in stockade.

Information from brother: Patient in difficulty since age of 3; constant trouble in school - expelled several times; offenses such as fighting, stealing and getting others in trouble. Guilty of purse snatching at age of 7 and 9; never conformed to what was expected of him. No emotional relationships with anyone; family made numerous efforts to help him but all unsuccessful. Brother had a lawyer friend visit him in Jail but patient refused and brother feels that this is patient's usual behavior when he is in trouble (like sit down strike in Jail) or when his demands were not met.

Refused psychological test and again when I requested him to take them.

On admission talked reluctantly and evasiveness and at times refused to answer questions. Depressed (about difficulties). No evidence of psychotic content.

On subsequent interviews talked less and less. Observed on wards participating and made requests on administrative call.

345

Defts. Exhibit No. 2 ~~(ID)~~

CLINICAL RECORD

DOCTOR'S PROGRESS NOTES

Date

2-24-58 25 yr. old white single male admitted this date (for 30 days) as a transfer from D. C. Jail. States at first doesn't know charges and then says he was picked out of a line up by "a

woman" but doesn't "want to talk about it."

Is suspicious, evasive and refuses to discuss past or present history. Says anything he says "will be twisted around."

Very little information obtainable because of its refusal to cooperate.

Physical essentially neg.

Imp.: (1) Schizophrenia - React.-Paranoid

/s/ Owens

Patient's Last Name - First Name	Register No.	Ward No.
Niport, Milton	75845	H-H-

346 [Filed Sep. 18, 1958] Defts. Exhibit No. 3 ~~(ID)~~

#75,841

CLINICAL RECORD

Report on Notes #

July 1, 1958: Dr. Cody
VSH

A call was received from Mr. Joseph Lowther, one of the Assistant United States Attorneys, today to the effect that the government will be trying the case on July 16, 1958. Mr. Lowther noted that the letter from the Superintendent stated the patient was uncooperative at Admission Conference and refused to talk. He asked the names of individuals who would be able to testify to that effect in the absence of Dr. Cushard. I suggested Dr. Owens' name to Mr. Lowther, inasmuch as Dr. Owens worked up the case (insofar as was possible), talked to the patient's brother and sister at some length and presented the meager findings at Admission Conference. Mr. Lowther indicated that a private psychiatrist may testify to the fact that the patient is mentally ill and incompetent and he hoped that the hospital would be able to assist him in testifying otherwise. I indicated that we were not able to form a diagnosis in the case and we could only testify as to what few findings we did make.

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75,841

CLINICAL RECORDContinuation of S.F. 507 Notes

April 3, 1958: Dr. Cushard
MLI

CLOSING NOTE

This patient was discharged from the hospital today into the custody of the United States Marshal for return to the District of Columbia Jail to await disposition of the charges pending against him. He had been committed to this hospital by the United States District Court for the District of Columbia on February 24, 1958 for observation, examination, and determination of mental competency. During his residence in the hospital this man consistently refused to cooperate to any extent whatever with attempted examinations and in Admission Conference on March 18, 1958 would not answer a single question or make any statement whatever. It was rather obvious to all physicians present that this behavior was consciously determined and there was nothing to indicate that there was psychosis present. However, we certainly did not have adequate examinations on which to base a definite opinion or make a diagnosis. It is noted that his behavior on the ward was at variance with his behavior in interviews, and none of the personnel on the ward had noted any particular evidence of mental illness. He was domineering, a trouble maker, and quite uncooperative in a consistent way. On March 21, 1958 a report was made to the United States District Court for the District of Columbia in which we said that it was impossible for us to form a valid opinion as to his present mental condition or competency for trial because of his complete lack of cooperation. In the report some description was given of his ward behavior.

An article in a local newspaper on April 1, 1958 reported that this man had been found competent for trial by Judge Holtzoff in the United States District Court for the District of Columbia. Letters of notification were sent to the patient's brother, Mr. Jerome Niport,

4202 Reisterstown Road, Baltimore, Maryland and to the patient's sister,
Miss Eileen Niport, 405 Candia Avenue, Coral Gables, Florida.

DIAGNOSIS: 90.2 NOT YET DIAGNOSED.

CONDITION
ON

DISCHARGE: UNDETERMINED.

COMPETENCY: UNDETERMINED.

CC: Veterans Administration /s/ William J. T. Cody, M.D.

Patient's Identification	Register No.	Ward No.
NIPORT, Milton	75,841	
St. Elizabeths Hospital		

335 [Filed July 17, 1958]

DEFENDANT'S REQUESTED INSTRUCTION NO. 4

You the jury are instructed that although a non-expert witness testifies that he has never observed an abnormal act on the part of the accused, this testimony is of no value unless that witness had a pro-longed and intimate contact with the accused.

337 [Filed July 17, 1958]

DEFENDANT'S REQUESTED INSTRUCTION NO. 6

You members of the jury are instructed that non-expert testimony as to mental conditions of the accused should be received cautiously, and scrutinized with care in the face of contradicting expert opinion.

330 [Filed July 17, 1958]

On this 17th day of July, 1958, came again the parties aforesaid, in manner aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon, after hearing further evidence, arguments of counsel and the Charge of the Court, the alternate jurors are discharged and the jury retires to consider its verdict. Whereupon, the Jury returns into Court and upon their oath say that the defendant is Guilty as indicted.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

RICHMOND B. KEECH
Presiding Judge
Criminal Court #1

HARRY M. HULL, Clerk

Present:

United States Attorney

By Joseph Lowther
Assistant United States Attorney

Dawn Copeland
Official Reporter

By /s/ Lloyd E. Dietrich
Deputy Clerk

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 [Filed Sept. 10, 1958]

Wednesday, July 16, 1958
United States District Court House
for the District of Columbia,
Washington, D. C. 10:00 a.m.

BEFORE: Honorable Richmond Keech, United States District Judge, for the District of Columbia.

APPEARANCES:

Joseph Lowther, for the United States Government, District Attorney's Office, on behalf of the Plaintiff.

William Edison Owen and Ralph Stein, 215 C Street, Northwest, Washington 1, D. C., on behalf of the Defendant, Milton Niport.

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HELEN D. TSINTOLAS

was called as a witness on behalf of the Plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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BY MR. LOWTHER:

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Q. Miss Tsintolas, where do you live, please? A. 9526 Pillsville Road in Silver Spring, Maryland.

Q. And you are also an officer of this Tsintolas Realty Company which has offices at the northeast corner of 3rd and H Streets, Northwest, Washington? A. That is true.

Q. And I want to call your attention to the date of December 16, 1957, Miss Tsintolas. In the afternoon hours of that date, were you in the realty company offices that afternoon? A. Yes; I was.

Q. And what time was it when you got there that afternoon?

8

A. I would say it was about 12:15 -- between 12:15 and 12:30.

Q. In the afternoon? A. Yes.

Q. Can you speak just a little louder, please? A. Yes.

Q. Now, there came a time after you got to the real estate company offices when you had occasion to see this defendant who is seated over at counsel's table; didn't there? A. Yes.

Q. And you point out the man you saw. Which one of these gentlemen seated here do you refer to? A. The one in the gray suit.

Q. Now, they are both wearing gray suits. The light or the dark --

MR. OWEN: The record may show, Your Honor, that she has selected the Defendant.

BY MR. LOWTHER:

Q. Where was this defendant, Miss Tsintolas, when you first saw him? A. When I first saw him he was on the outside of the building.

Q. You mean outside of your office? A. That is right.

9

Q. Now, your office faces both on -- has windows both on H Street and 3rd Street; isn't that right? A. Yes; it is.

Q. And the entrance of your office is kind of -- well, it actually is catty-cornered to the corner of the intersection? A. Yes.

Q. Now, where was he as between H and 3rd Streets, this defendant, when you first saw him? A. He was on the store-front right on the side on H Street.

Q. H Street? A. Yes.

Q. Now, next to the side of your store on H Street is a part of the building belonging to Universal Pictures? A. Yes; it is.

Q. And also in the back of the store as you go north on 3rd Street is a continuation of the building belonging to Universal Pictures?

A. Yes; it is an "L"-shaped building.

Q. Now, then, in your own words will you tell His Honor and the jury what happened from the time you first saw this Defendant Niport all the way through? Take your time. A. When I first saw the Defendant Niport he passed by 3rd Street -- I mean H Street, and I thought he was going into Universal Pictures because he had a brief case. And
10 then he came in front of the store front.

THE COURT: We can't hear you. You have to speak louder. The jury has to hear you, and so do counsel have the right to hear you.

THE WITNESS: Yes. I saw him go by the first time.

THE COURT: I am not challenging what you are saying. I am just trying to hear you and understand you. Then you said something about a brief case.

THE WITNESS: He was holding a brief case. Normally, the people who go into Universal Pictures do hold brief cases. I thought the man was just going into Universal Pictures.

Then I saw him standing in front of my store front looking into the office. And at that time I had quite a few clients in the building -- in the office, rather -- and he came in. And he inquired after I waited on the people, he was standing in the back on the front of the office, and we had a colored man who was waiting to get some orders -- well, anyway, we had a colored man waiting to get some orders to go out and do his maintenance work, and I asked Mr. Niport if I could wait on him first and he insisted that I wait on the maintenance man.

I told him, this fellow -- of course he didn't know who the man was to begin with -- I told him we can take care of you first so he came in
11 front of the counter --

BY MR. LOWTHER:

Q. Who is "he"? A. He was the defendant.

Q. Go ahead. A. And he started inquiring about an apartment. First he was enquiring about a furnished and then unfurnished apartment. And then to get rid of him I gave him an address on a sheet of paper and told him to go to 5400 7th Street, Northwest, to see the resident manager in 101, and she would be glad to help him.

So, he left, and then about five minutes later I saw him coming down on the 3rd street side and he came into the office again.

That was after the colored fellow left from the office, and at that time I was on the phone and I had about three phones I was answering, and he waited and then he started moving toward the side.

THE COURT: What side?

THE WITNESS: Moved toward the side of the counter.

And as I went to hang up the phone from the last call that I had, he came behind the counter. It was a slippery sound. He came real fast. He came behind the counter, and I had my back at that time turned to him because I was hanging up the phone and when I turned around -- rather, he told me "Lady, I won't want you to get scared; I just want you
12 to do what I tell you to do."

THE COURT: Don't want you to do what, Madam?

THE WITNESS: "I don't want you to get scared. I want you to do what I tell you to do".

And when I turned my head around I saw him standing behind me. I didn't notice the gun at first. I looked at him two or three times to make sure that I wasn't imagining and I tried to pull myself together but when I looked at him the third time my eyes glanced at the gun that he had in his hand and he was pointing out to me, and I took a few steps--then he opened up his brief case and said "I want you to put all the money you got under the counter in my brief case." So I took a few steps toward the front of the counter and at that time I was pregnant and I tried to control myself and not -- hesitating for a few minutes because of my condition. So he said "If you ring the alarm I will let you have it." And I told him, "Man, we don't have an alarm in this building; we don't have no use for it." So, after he made that remark, I took the money and put it in his brief case.

BY MR. LOWTHER:

Q. Now, what money are you talking about? A. About the company money.

Q. Where was that? A. The money was under the counter.

13 Q. How much? A. It was \$456.

Q. And that belonged to the corporation? A. Yes; it did.

Q. What did it represent? A. It represented collections from the morning to the holdup.

Q. Now, let me ask you this question, Miss Tsintolas: At the time you saw this defendant first in the realty company, and before he left and came back, had you taken in any rent receipts from customers while this defendant was in the office at that time? A. Yes; I had.

Q. Now, where did you put those collections? Where did you put them, I should say. A. Under the counter.

Q. I see. Now, will you -- A. We have a cash drawer under there.

Q. At the time you took some of these rent receipts in while this defendant was in your office the first time, do you recall putting them under the counter in the cash drawer then? A. Yes.

14 Q. You reached the point in your narrative when I interrupted you, that you got the receipts. Will you go ahead from there, please? What did you do with the money after you got it from the cash drawer, the \$456? A. He had his brief case open and he told me to put the money in there, and I threw it in there.

Q. Go ahead. A. So after he took that money he wanted to know where was my pocketbook. I had my pocketbook in the back office on the chair and because I figured when the girl comes back I was going to go down town to complete my Christmas shopping. So I spotted my pocketbook and he wanted me to go in to the back office, but I don't know how I did it, I opened the door and I grabbed my pocketbook to the front part of the office. I said I would rather stay here where I will be more relaxed. So in my pocketbook I had just four \$1 bills. So when I opened my pocketbook I told him this is all I got.

He said "You let me have that, too." So I put it in there one by one, thinking that he might have been at least a little considerate to leave me with some change.

So he took that and he said "I want you to go in the back office. I don't want you to make a move or else I am going to let you have it." So I ran to the back office and locked myself in.

And as I was in there we have two picture windows in the office and I peeked through one of the curtains and spotted him in the office
15 where he was closing his brief case, and I looked at him to see what he was going to do and then he started walking down in front of the office.

When I saw him walk out of the office and turn to go up on H Street, I mean on 3rd Street, I went -- I actually went to close the front door but I didn't do that because I spotted the girl coming back to the office and the office girl and also saw two or three salesmen coming to the office to see me. They were crossing the street so I got a little more encouragement and I stuck my head out of the door and I saw the defendant going up on Third Street where he was just making his turn behind Universal Pictures. I followed him. I cut through the cars over there.

He was ahead of me all of the time and I saw him get into his convertible car. I glanced at the -- and I noticed no one was in the car other than he. He was getting in it himself and he had a little trouble starting the car and at that time I took his tag numbers, rather I remembered them and I took the tag numbers and as I was going back to the office I saw two policemen that were in front of the office. I don't know where they were headed for, and I told them I was just held up and gave them the tag numbers. They told me to call headquarters immediately.

Then, when I went into the office I jotted the numbers down so I
16 wouldn't forget them and I called the headquarters and before I knew it the police were in my office.

Q. Now, Miss Tsintolas, when you say that you saw this Defendant Niport after he got through the door and left the office going north on

Third Street, you say you went out there? A. Yes.

Q. And when you got out on Third Street and looked north on Third Street you would be looking toward Universal Pictures from the rear of your building. Could you see him then? A. Yes. He was walking with his brief case and then he made his turn. He walked up and turned in back of Universal Pictures.

Q. What is back of Universal Pictures? A. A parking lot.

Q. Is there an alley there also? A. Yes, there is.

Q. And across from Universal Pictures in the alley, what is there? In other words, what is the other side of the alley? A. A play ground to the school. Seagram School.

Q. Now, where, if you recall, was this convertible automobile that you saw this Defendant Niport get into? A. The convertible automobile was parked in the alley facing Second Street.

17 Q. That would be facing East, then? A. East.

Q. Can you recall for his Honor and the Jury what color that automobile was? A. It was a pink car with a black top, convertible top.

Q. Do you know enough about automobiles to know what make it was? A. It was a Ford.

Q. Do you have any idea what year it was? A. No, I don't know the year.

Q. Then you say that you made a mental note -- he had some difficulty starting the automobile? What do you mean by that? A. Well, because he started the car and it wouldn't kick.

Q. And were you there at the time -- did the car actually start later on? A. Yes, it did.

Q. Where did it go? A. It went up toward Second Street, East.

Q. And now, you say you made a mental note of the tag number at that time? A. Yes, I did.

* * *

20 Q. And at any time after you first saw this pistol, was it pointed at you by this Defendant? A. Yes. It was pointed at me.

Q. At the time you saw this Defendant and he told you to put the rent receipts, or to put the money from the cash drawer in this brief

case, can you demonstrate for His Honor and the Jury what he was doing with the brief case and how you put the money in there and where this gun was at that time? A. Well, when he pointed the gun at me and after he made this statement that he was going to let me have it, and he opened up his brief case and he held it with both hands, but in between he put his gun in his pocket and he had his brief case open with both hands.

Q. Now, did you ever see this Defendant before this date that you described to us? A. Never.

Q. All right. Did he have a hat on on that date? A. He did not have a hat on.

Q. Did he have any mask or handkerchief over his face in the office? A. He didn't have anything.

Q. Now, then, did he have glasses on? A. Yes, he did.

Q. Can you describe those glasses? A. Those glasses were plastic rim glasses.

21 Q. Like horned rim, you mean? A. Yes.

Q. Now, tell His Honor and the Jury what was the closest distance-- make believe you are in the office where you sit right now. On that date what was the closest distance away from your face that this Defendant's face was face to face with you? A. I was just sitting like I am sitting here right in front of me. I would say two or three feet.

Q. You had occasion to hear him talk? A. Yes, I did.

Q. Now, then, when he left the office, after he put the money in the brief case and you saw him by peeking through the door going out of the office north on Third Street, was he running or walking? A. He was walking.

Q. When you yourself came out of the office and followed him and saw him turn in the alley behind your office and behind Universal Pictures was he running or walking as he went up to the car? A. He was walking.

Q. And where was this brief case he had at the time you saw him going toward the car, if you recall? A. It was in his hand.

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CROSS EXAMINATION

BY MR. OWEN:

* * * * *

30 Q. I understand you were somewhat disappointed that he wasn't thoughtful enough to leave you a few dollars. A. That is right. My four dollars.

Q. My question is did you suggest he leave you a couple of dollars for your Christmas shopping? A. No; I did not.

Q. Did you talk to him about anything? A. I didn't talk to him about nothing. All I did was follow instructions.

Q. Now, did he instruct you to lock yourself in the back room? A. He told me to go into the back room; yes.

Q. I understood you to say you locked yourself in the back room. A. I locked myself in for my safety.

Q. Oh, you mean you locked him out of the back room when you went in the back room. A. In other words, he stayed in the front office and I went to the back office where he instructs me to go, and I went in there and locked the door immediately so he wouldn't come in there.

Q. Did he in any way try to lock you in there or secure you or tie you or anything like that? A. No.

* * * * *

33 Q. Now, did Mr. Niport act figity or nervous in any way that you remember? A. No.

Q. Seemed very calm. Did he move rapidly or slowly? A. Well, I would say he was average.

Q. And did he hold his hand up in any way to keep you from seeing who he was or attempting to conceal his identity? A. No; he did not.

Q. Do you mean he was just walking in like a regular customer to inquire about real estate, and walked out with your money? A. I didn't say that. When he came in he walked in -- when I saw him come in he had his brief case, well dressed, and he inquired about an apartment. And then he walked out after I gave him the address. He came back a few minutes later and he was waiting for me to complete my phone

call, at which time he was approaching the side of the counter, and then he came behind me. He wasn't nervous. I mean --

Q. Now, were you nervous? A. Well, when I saw him getting toward the side of the counter I always get a little precaution. I didn't get nervous. But I started getting a funny feeling, and when I hanged up the phone then --

34 Q. I believe you said you were pregnant? A. Yes.

Q. Has the child been born? A. Yes, the baby was born.

Q. Boy or girl? A. It's a boy.

* * * * *

Q. You are sure his car wasn't pulled up out front with the motor running and so forth? A. No; it was not.

Q. Now, when he had difficulty starting his car did you offer to help him get it started or continue on up to him? A. No; I just stayed
35 behind the car. All I wanted to get was the tag numbering and see who was in the car.

Q. The only part I don't understand is when you walked out of there you evidently decided to unlock yourself and come on back out, after you locked yourself in the back room. And you saw some people coming, some salesmen that work for your company, I believe you said. A. The office girl was coming. She was across the street on the corner where the AMOCO is.

Q. Did you run out and scream for help or assistance in any way? A. Well, I saw the salesmen coming and there was a fellow crossing the street, and I told him I was held up, to follow the man. By the time they understood what I was talking about I ran up there myself, behind him.

Q. Well, did they try to stop him or pull him out of the car when it wouldn't start? A. They didn't understand. By the time I explained to him what happened I was afraid he would have gotten away.

Q. So you decided to go after him yourself? A. Yes.

Q. Now, just how was he parked in that parking lot? Did other cars have him blocked; or was he pulled fully up into the parking lot?

A. He was not in the parking lot. He was in the alley.

36 Q. Oh. I misunderstood, Your Honor.

Where is this alley in connection with the parking lot? A. Parallel.

Q. You mean he was parked illegally? A. Yes; he was. I would say parked in an alley was illegal.

Q. Was he blocking the alley? A. Well, it's a two-lane alley. He was on the one side, on the right side facing the lot.

Q. Now, the picture appears to be a convertible. Did he have the top down? A. It was up.

Q. Now, did he -- as I understand you said he didn't have a getaway driver or anything like that waiting with the car running? A. The car was not running. He had to start it.

Q. You mean he had nobody in the car? A. That is right. No one in the car.

Q. Did you feel sorry for this man at any time during this episode? A. Why should I feel sorry for him?

Q. Did you feel you could give him some kind of advice to pull a better fate than he was trying to pull, than he seemed to be able to?

37 A. I didn't have a chance to give any advice. I don't know why I should give him any advice. I felt sorry for myself and my condition.

Q. Well, as I understand, he didn't seem to be in any big hurry to get away. Not in a big enough hurry to run or quicken his steps; is that correct? . . .

I believe you said three or four times you were sure he was walking with the brief case, not only to your office, but also around to wherever the car was parked. A. That is right.

Q. Did you think to pick up the telephone when you locked yourself in the office, to call the police? A. At the moment I was in the back office I wanted to see what he was doing. That is why I peeked through the picture window and saw him go out. I was going to close that front door but when I saw these people that I knew crossing the street I got encouragement to stick my head out of the door and saw him going up on 3rd Street and walking and turning in the back of the parking lot.

I guess he was headed for his car, which I didn't know at that moment. That is when I went behind him.

* * * * *

38 Q. Could you tell whether he had a white shirt and tie on? A. He was dressed -- completely dressed. With a shirt and tie.

Q. And well shaven? A. Yes; he was.

Q. Hair combed? A. Very neat.

Q. Hair combed? A. His hair was combed.

Q. No hat pulled down over his eyes? A. He didn't have anything over his eyes other than his eyeglasses.

39 Q. As I understood he told you to relax and not be frightened; is that right? A. He told me not to get scared. When I had my back to him he got behind the counter. He said "Lady, this is a holdup. I don't want you to get scared" because I guess he must have felt sorry for my condition, or something.

Q. At one point I believe you told him you would feel better, more relaxed, if you were in the front part of the office, rather than standing behind the counter. A. No; it was not at the time behind the counter. He wanted me to go to the back office. I told him I had my pocketbook in the back and I spied my chair. He said "I want you to go behind it in the office" and I opened the door -- swung the door open and ran over to the desk and I said "I am more relaxed over here."

Q. And did he allow you to stay there? A. Yes; I stayed there.

* * * * *

40 Q. Now, did I understand correctly while Mr. Louthier was asking you questions that you said he put this gun back in his pocket there while you were all both trying to get the money in the brief case? A. Yes; he did.

Q. You were helping him put the money in the brief case? A. When he pointed a gun at me and told me to put the money in there what did you want me to do?

Q. I am asking you the questions now. You were all up close together; isn't that right? A. We weren't close together.

41 Q. He was on one side of the brief case and you were on the other; was he not?

He was holding it open; was he not? That's the way I understand your story. Is that correct? A. He came behind the counter with a gun pointed at me.

Q. Yes. A. Which of course I didn't know it immediately. I noticed him behind the counter and tried to get myself together and when I looked at him my eyes spotted a gun, and he told me "I want you to put all the money in my brief case."

Q. He didn't tell you he had a gun the first time; you had to find it out yourself after three looks; is that right? A. Yes; I saw it pointed at me.

Q. What I want to know was did he put the gun back in his pocket then when you all worked to put the money in the brief case? A. Yes; he put his gun -- he instructed me he was going to let me have it. I said "man, we don't have an alarm in this office."

He said "I want you to put the money in the brief case."

Q. Did you look in the brief case? Was there anything else in the brief case? Papers, or books? Anything at all that you saw? A. When I glanced at it there was nothing in there. It was an empty brief case.

42 Q. Then you put the money in there? A. The way the eye caught it, it looked like there was nothing in the brief case.

Q. Which pocket did he put the gun away in? Was it an overcoat pocket or a side pocket? A. Overcoat pocket.

Q. Did he ever tell you whether the gun was loaded or not? A. He told me he was going to let me have it. I didn't have time to ask whether it was loaded or not.

Q. Did you understand he was going to give you the gun, or to shoot you? A. He was going to shoot me. What do you think?

MR. OWEN: I have no further questions.

REDIRECT EXAMINATION

BY MR. LOUTHER:

Q. Miss Tsintolas, you were asked by defense counsel toward the

early part of cross examination about your going into the back office.

That office is separated from your front office by a door; is it not?

A. Yes.

Q. And one of those pictures, I believe, that door to the back office appears -- excuse me one second, Your Honor.

43 Now, maybe it doesn't.

May I show the witness these exhibits, Your Honor?

MR. OWEN: We will stipulate it does if Louther says it does.

THE COURT: Now, ladies and gentlemen, again where there is no dispute, then a stipulation is taken into evidence as testimony.

BY MR. LOUTHER:

Q. At the time, what did this defendant say to you about getting in the back office? A. Well, after I put the \$4 in his brief case he told me "Now, I want you to go to the back office, not to make a move or I am going to let you have it."

When he said that I dashed to the back office.

Q. Now, you were asked a question about the pronunciation of your name, and you say it is Sintolas. Is that a Greek name? A. Yes, it is.

MR. LOUTHER: Now, I would like to approach the Bench before I continue further with redirect examination, Your Honor.

THE COURT: All right.

(A Bench Conference.)

MR. LOUTHER: I would anticipate that the defense in this case is
44 to be the defense of lack of mental capacity to commit this crime.
Is that to be the defense?

(No response.)

MR. LOUTHER: To show it in this trial, I am prepared to examine this witness now, a lay person, as to the man's soundness or unsoundness of mind during the time she saw him.

MR. OWEN: We would object to any interrogation of this witness along this line unless Mr. Louther can show that the witness had some sort of --

THE COURT: Let me ask you this: You didn't answer the question put. As I understand the question, that will be your defense.

MR. OWEN: That is correct, Your Honor.

THE COURT: I wanted to make sure as the record reflected no answer.

MR. OWEN: We would object unless Mr. Louthier can make an offer of proof that this witness had a prolonged or intimate contact with the accused.

THE COURT: I think it goes to the witness' credibility.

MR. OWEN: We object to the testimony of this witness on the point that has been suggested.

(End of bench conference.)

45

BY MR. LOUTHER:

Q. I want to ask you some questions that were not asked you on my first direct examination, nor were they asked you by defense counsel when he cross examined you:

As best you can estimate it, how long a period of time from the time you first saw this defendant Niport in front of your office there on December 16 was it until the time you saw him get into that convertible automobile; that pink convertible and start toward Second Street, from that alley in back of Universal Pictures, as best as you can recall?

A. I would say that I saw him standing in front of the office.

Q. The whole period of time from the time you first saw him. He comes in. He goes out. He comes in again -- what happened until you followed him to the automobile. The whole period of time from the first time you saw him until you last see him.

How long was it, as best as you can recall? A. I would say at least 20 or 25 minutes.

Q. Now, then, how long would you say he was out of the office after you directed him to the address for possible rental of an apartment before he came back? How long was he out of your presence after he first came in the office? A. About four or five minutes, I would say. I don't know exactly.

46 Q. Now, you had an occasion to observe his demeanor, but then--
by that I mean how he acted when you first saw him, and from that time
on, did you not? A. Yes.

Q. You had occasion to hear him talk and to talk to him; did you
not? A. Yes.

Q. And you had occasion to look at him and see how he looked,
and everything like that. A. Yes.

Q. Now, you have no professional training. You are not a nurse,
or anything, Miss Tsintolas? A. No; I am not.

Q. You are a housewife, are you not? A. Yes.

Q. All right.

Now, in the past have you had occasion to see persons who in your
opinion were not mentally sound? In your past life? A. I don't know if
I recall of any.

Q. Now, then, based on your own experience, your past life ex-
perience, and limiting yourself to a time that this person -- this defen-
dant -- was in your presence on December 16, and what he said and what
he did, how he looked, can you tell His Honor and the jury whether or not
in your opinion this man was of sound or unsound mind? A. In my opinion
47 he was of sound mind.

MR. LOUTHER: I have no other questions of this witness.

RE CROSS EXAMINATION

BY MR. OWEN:

Q. Miss Tsintolas, has the Assistant District Attorney gone over
this with you before you took the stand as to whether you would say he
was of sound or unsound mind? A. I gave you my opinion.

Q. No; that is not what I asked:

Did the District Attorney discuss this with you before taking the
witness stand here today? A. Discuss what?

Q. What? A. What do you mean "discuss"? What do you mean?

Q. As to your opinion as to mental condition or emotional distur-
bance. A. Oh, no; he hasn't discussed to me about anything about un-
sound or sound mind.

Q. He didn't know what your testimony would be or your response to that question; is that right? A. I didn't give him an answer. I didn't discuss anything about any sound or unsound mind. The only thing I discussed with the District Attorney was how he held up the office. What
48 happened at the office and what was the outcome.

Q. Now, when you say that you did not think he was of unsound mind, what do you mean by that? A. What?

Q. You have told us that it is your opinion that Mr. Niport is of sound mind.

Now, what do you mean by that?

THE COURT: Excuse me. I understood her testimony to be he was of sound mind on this occasion.

That is the time you saw him; wasn't it?

THE WITNESS: I am talking about the moment I saw him. During that whole time I thought he was of sound mind.

BY MR. OWEN:

Q. Now, what do you mean by that? A. It means like the rest of us, or we have our heads on our shoulders. Have our minds together.

Q. Now, as I understand, this was your first time to be held up?
A. Yes, it was my first time.

Q. Now, if you will just think for a minute - was it everything you would expect it to be - as you would expect it to be. Were you surprised in any way with the type of person --

THE COURT: Let me suggest that you reframe that.

You weren't expecting to be held up, were you, Madam?

49 THE WITNESS: No.

THE COURT: I think you had better reframe that.

BY MR. OWEN:

Q. Well, was it as bad as you thought it would be? A. What do you mean?

Q. After it was over, were you surprised that armed robbers were the type who just spend a half hour with you?

MR. LUTHER: I will object, Your Honor.

THE COURT: I will sustain the objection to that.

THE WITNESS: He didn't spend a half hour with me.

BY MR. OWEN:

Q. I thought you said 25 minutes. A. I mean -- the whole time I saw him it was a half hour but I mean he didn't --

Q. Now, you suggest that you mean that he acted like the rest of us would? Is that what I heard you to say -- had his head on his shoulders like the rest of us? A. He knew what he was doing.

Q. Now, let me ask you a hypothetical question:

Let's assume that you were going to commit a robbery.

THE COURT: I will sustain the objection to that, sir.

MR. OWEN: I don't think there has been an objection made, Your Honor.

THE COURT: The record will reflect a hypothetical question has to have some basis in the facts in the trial, and there is no such fact
50 that this lady has ever been involved in such a situation.

MR. OWEN: Well, let me ask you would you have used a pink car--

MR. LOUTHER: I object.

THE COURT: I will sustain the objection. I think many of those things you can argue, as you know.

MR. OWEN: I think this witness--

THE COURT: I ruled on that.

MR. OWEN: All right.

Your Honor, I suggest I believe the Court in error, and desire the record to be protected on this point as to the scope of cross examination of a lay witness who has given a psychiatric conclusion.

THE COURT: I think the record ought to reflect that the fact is I'm dealing with a specific question. If you have any other question that I think appropriate I will pass on that. I'm not doing this in blanket, sir.

MR. OWEN: Well, the Court permitted a hypothetical question of a lay witness.

THE COURT: I will permit any hypothetical question which is proper in law, namely, be pitched on facts of record or any part thereof. Those without the record, to answer, no, sir.

BY MR. OWEN:

51 Q. Now, you have explained this morning certain facts, as to what Mr. Niport did and how he acted.

Let me ask you, would you have acted in the same way or do you think that a person with their head on their shoulders, as you suggest, would act the same way that he did under these circumstances?

THE COURT: You mean by that if she were intent on robbing a place?

MR. OWEN: Yes, sir.

THE WITNESS: First of all, I wouldn't do anything like that.

BY MR. OWEN:

Q. Of course not. It is strictly hypothetical. Sort of like a Perry Mason novel.

MR. LOUTHER: Your Honor, I will object.

THE COURT: Sustained.

Ladies and gentlemen, Perry Mason is not in this case.

MR. OWEN: Well, let me ask it another way:

BY MR. OWEN:

Q. Were you surprised that he wasn't in a little bigger hurry than he was? A. Well, I don't know if you would call it surprise --

Q. Did it seem unusual to you?

THE COURT: You have not let her answer the question.

He didn't seem to be in any big hurry; is that the question?

52 MR. OWEN: Yes; that is right. In pulling this job.

THE WITNESS: Well, he was polite in waiting for me to complete my phone calls.

BY MR. OWEN:

Q. Yes. A. But when he came behind the counter he slipped so fast that I didn't know he was behind the counter until he talked, and I turned my head around, so I don't know how to answer that question properly because it's the first time.

Q. Now, were you surprised that the getaway car had license plates on it? A. I wasn't surprised -- that it did have license plates on it?

Q. Yes; that it did have license plates on it. I understand you

testified it did. A. Yes; it did.

Q. Were you surprised that it had license plates on it? A. No; I wasn't.

Q. Were you surprised it was not running? A. I didn't take none of that into consideration.

Q. Were you surprised he had difficulty getting it started?
A. No; I wasn't surprised.

Q. Were you surprised it was parked some 100 or 200 yards away
53 on a parking lot, or edge of the parking lot? A. 200 yards away from what?

Q. From the scene of the crime. A. I wouldn't say it was 100 or 200 yards away from the scene of the crime.

Q. How far would you say it was? A. I would say our office -- the side view of it is about 100 feet.

Q. How far is it from the corner to the alley up Third Street?
A. Well, I don't know the exact dimension, but I will say --

Q. About the length of a football field? A. Oh, no.

Q. You folks have at least a hundred feet along there; do you not?

THE COURT: Can you give the distance where he left the office to where the car was parked? Can you approximate it?

THE WITNESS: I can't approximate it.

MR. OWEN: All right, then.

THE WITNESS: But I know it is not 100 or 200 yards; I can say that.

THE COURT: All right.

BY MR. OWEN:

54 Q. Now, what grade did you attain in school? A. Who, me?

THE COURT: I don't know the purpose of this.

MR. OWEN: I would like to know how educated she is.

THE COURT: She is not appearing as an expert. She is appearing as a worker and housewife only.

THE WITNESS: Yes.

THE COURT: I will let you answer to save time. Did you go to high school?

THE WITNESS: Yes; I did.

BY MR. OWEN:

Q. Now, have you had any training in the psychiatric field?

A. No.

Q. Do you know what a socio-pathic personality is?

THE COURT: I will sustain the objection to that.

Q. Do you know what schizophrenia is?

MR. LOUTHER: Objection.

THE COURT: I'll sustain the objection.

BY MR. OWEN:

Q. Do you know anything about emotional illness or emotional disturbance?

THE COURT: You mean as an expert or as a lay person?

MR. OWEN: As anything.

THE COURT: Let's break it down.

55 As a lay person.

MR. OWEN: Yes.

THE WITNESS: I don't know anything about schizophrenia.

BY MR. OWEN:

Q. Have you ever been to a psychiatrist? A. No. Why? Should I go?

Q. No. I am asking you. Have you? A. No.

Q. Have you ever received any treatment for emotional disturbance by a psychiatrist? A. Never.

Q. Has anyone in your family?

THE COURT: I will sustain the objection.

This lady is not being tried. She is not pleading the defense of insanity.

BY MR. OWEN:

Q. Have any of your close friends?

THE COURT: I will sustain the objection to that.

MR. OWEN: I have not finished asking the question yet.

THE COURT: Reframe it.

I will sustain the objection as far as put.

MR. OWEN: No further questions.

MR. LOUTHER: With Your Honor's indulgence, one or two questions:

56

REDIRECT EXAMINATION

BY MR. LOUTHER:

Q. Miss Tsintolas, Mr. Owen asked you at the outset of his cross examination that, this cross examination just completed, whether or not you discussed with the District Attorney and the District Attorney knew or asked you questions as to your opinion as to the soundness or unsoundness of mind to this Defendant Niport.

Now, let me ask you this: You talked with-- the first time you came down to our office you talked with a District Attorney other than myself; didn't you? A. Yes.

Q. And his name was Mr. Titus; wasn't it? A. Yes; it was.

Q. And after that, on, I guess two or three weeks ago, you came down to my office and talked to me. A. Yes.

Q. In company with a policeman? A. Yes.

Q. Don't you remember, Miss Tsintolas, I asked you in my office questions about whether or not, or in your opinion you thought this man Niport, when he was in your office, acted normal or not normal?

A. Yes; I remember that.

57 Q. You remember that much? A. Yes.

Q. Do you remember what you told me at that time? A. I told you he was normal.

Q. All right.

No further questions, Your Honor.

MR. OWEN: Will your Honor indulge me a moment?

THE COURT: Yes.

MR. OWEN: Thank you very much, Miss Tsintolas. That is all.

THE COURT: You may step down and have a seat in the court room, or you may leave, unless the District Attorney or defense counsel wants you to stay.

* * * * *

65

JOHN AULD

was called as a witness on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOUTHER:

Q. Officer Auld, will you give His Honor and the jury your full name and rank and assignment in the Baltimore City Police Department, please? A. Officer John Auld, Baltimore City Police Department, assigned to the Northwestern District.

* * * * *

66 A. Patrolman assigned to radio car, Northwestern District.

Q. In other words, you were assigned a radio car in uniform on that date? A. That is right.

Q. Now, then, after the date of December 16, shortly thereafter, 1957, you had occasion, did you not, Officer Auld to arrest this defendant Niport who is seated over here at counsel's table, in the light gray coat?

A. Yes, sir.

Q. And what was the date and time of arrest, Officer Auld?

A. December 20, 1:30 a. m.

Q. 1:30 in the morning of December 20? A. Yes, sir.

Q. What was the place of arrest? A. 4200 block Reisertown Road. His home.

Q. You were accompanied by whom, if anyone, from Baltimore City Police? A. Sergeant Joseph Judd, and Officer George Hannaman.

Q. At the time you arrested the defendant Niport, you had knowledge, did you not, sir, there was a warrant for his arrest in Washington, D. C. ? A. That is correct, sir.

Q. * * *

* * * * *

67 Did you have occasion to see the automobile, the front and rear of which are depicted in those photographs? A. Yes, sir.

Q. And where did you see that automobile with reference to the date and time that you arrested this defendant Niport? A. In front of the 2800 block at Quantico Avenue, Baltimore, Maryland.

Q. Now, where is the 2800 block of Quantico Avenue. How far is it with relation to the address on Reisertown Road, where you arrested the defendant? A. Directly in the rear, approximately 60 to 80 feet.

* * * * *

68 Q. And when did, if at all, on the morning of December-- the early morning hours of December 20, did you first see the automobile, the pictures of which you had before you, Government's Exhibits 7 and 8?

In other words, I am trying to find out, Officer, if you did see that car. A. I did.

Q. Where was it when you first observed it? A. In front of 2800 Quantico Avenue.

Q. When did you first see it there? What time in the morning? A. Approximately one o'clock.

Q. On December 20? A. Yes.

Q. Were you patrolling that area, among other things, with a lookout for that car in mind? A. Yes, sir.

Q. Now, then, did you observe the automobile, Officer Auld, before you went into the premises on Reisertown Road, and arrested this Defendant Niport? A. Yes, sir.

Q. At that time that the Defendant Niport was placed under arrest, did you or any of the other officers at the Baltimore City Police Department question this defendant or anyone else in his presence as to that
69 automobile, the pictures of which you had before you? A. I am afraid I don't understand the question.

Q. Was there anything asked this defendant whose car that was? A. Yes, sir.

Q. What was he asked, and what did he say? A. The defendant was asked whether or not it was his automobile parked there -- out in front. He said it was his, but it was in his mother's name.

* * * * *

Q. And how long would you say that from the time of arrest of the defendant was it that you were in his presence in those early morning hours? How long were you and he together -- the defendant? A. Approximately 45 minutes.

Q. Did you have occasion to talk to him and listen to him talk to you and other persons? A. Yes, sir.

70 Q. How long have you been with the Baltimore City Police Department? A. Five and a half years.

Q. During the five and a half years that you have been so employed, have you had occasion to observe people who, in your opinion, were not of sound mind, were of unsound mind? A. Yes, sir.

Q. As a result of your occupation as a policeman? A. Yes, sir.

Q. Now, then, before you arrested this Defendant Niport in the early morning hours of December 20, 1957, did you ever see this man before?

By that I mean this: Were you friendly with him? Did you know him from the neighborhood, or anything like that? A. No, sir.

THE COURT: Now, Mr. Louthier, we are at the point where we need an admonition. Suppose you come to the Bench.

(Whereupon, Counsel approached the Bench, and the following transpired:)

MR. OWEN: Your Honor, I assume it is about his previous record. I am going to bring it out, but I don't want him to bring it.

MR. LOUTHER: I am certainly not going to do that, Your Honor.

71 THE COURT: All I wanted was to know whether you might have had a change of mind. You indicated that you wanted all the record in.

MR. OWEN: We want to bring it out.

THE COURT: All I am interested in is this: The District Attorney is not going to bring it out. In the interest of not doing that would you with the defense counsel admonish this officer -- suppose you step out with the Government Counsel and Defense Counsel, please, Officer Auld.

I want you to admonish him not to bring that out.

(Whereupon counsel and the witness retired from the room for a conference.)

(End of Bench Conference.)

THE COURT: You may proceed.

BY MR. LOUTHER:

Q. Now, Officer Auld, based on your observation of this defendant during --

THE COURT: Excuse me. I am afraid I cut off the answer. I think that you asked him had he seen the defendant before. He may have answered, but I interrupted, and maybe I distracted him and destroyed it.

MR. LOUTHER: May I rephrase it?

BY MR. LOUTHER:

Q. Officer Auld, all I am trying to find out at this point is this:

72 You are not a friend of the defendant. You didn't know him before he was arrested on that evening? A. No, sir.

Q. Now, based on that period of observation and conversation of 40 or 45 minutes, from the time you first arrested the defendant until you were out of his presence in the Northwest Precinct, and based on your past experience as you describe in the Baltimore City Police Department, can you tell His Honor and the Jury whether in your opinion this defendant at the time you saw him on December 20 was of sound or unsound mind?

MR. OWEN: Your Honor, before the witness answers may I suggest to the court that leave be granted to the defense to take the same position with regard to this witness as to the previous witness in regard to this point?

THE COURT: Yes.

BY MR. LOUTHER:

Q. Can you tell us, in other words, whether you thought he was of sound mind or unsound mind at the time? A. Sound mind.

Q. Now, did he talk rationally. Could you understand him?
A. Yes, sir. Very clearly.

Q. Did you notice any abnormality about his actions during the period after he was arrested and was in your presence that morning?

73 A. No, sir.

MR. LOUTHER: No further questions, Your Honor.

THE COURT: All right.

Mr. Owens.

BY MR. OWENS:

CROSS EXAMINATION

Q. Officer Auld, do you feel that you have had prolonged and intimate contact with the accused seated here at the counsel's table?

THE COURT: I will sustain the objection to that. It is for you to determine his contact. I believe he stated it was 40 or 45 minutes, ladies and gentlemen. That is for you to determine.

MR. OWEN: I missed that, Your Honor. How many minutes do you think that you had to study this man as to his condition?

THE WITNESS: Approximately 45 minutes.

BY MR. OWEN:

Q. Never before in your life. 45 minutes is all? A. 45 minutes.

Q. As I understood you have never had any type of training in the field of emotional disturbances? A. That is correct, sir.

Q. And you have never had any experience with any yourself?

74 MR. LOUTHER: Just a moment, if the Court please.

I am not quite in tune with counsel asking this officer whether he has been emotionally disturbed or if he has seen other people who he thought were. I am pretty sure this officer has not been.

THE COURT: Officer, I understand you have no special training in emotional disease or things of that sort.

THE WITNESS: That is right.

Suppose you make it a little clear.

MR. OWEN: Let's withdraw that question.

THE COURT: Ladies and gentlemen, the question has been withdrawn, and if there was an answer you will ignore that, too.

MR. OWEN: This is No. 235-212 is the number you recited, the way I recorded it, as the license plate on this automobile.

* * * * *

80 LOUIS BLANCATO

* * * * *

81 DIRECT EXAMINATION

BY MR. LOUTHER:

Q. * * * * *

What is your name, rank and assignment in the Metropolitan Police Department? A. Detective Louis Blancato, attached to the robbery squad of the Metropolitan Police Department, Washington, D. C.

Q. Was that your rank and assignment, Officer Blancato, in the month of December last year, 1957? A. Yes, it was.

* * * * *

84 Q. Now, there came a time, did there not, Officer Blancato, when you had occasion to be notified by the Baltimore City Police that this Defendant Niport had been arrested? A. That was the following morning on the 20th. Yes, sir.

Q. What time in the morning did you get that information? A. I was called at my house at 2:45 in the morning.

85 Q. Thereafter you had occasion to go over to the City of Baltimore? A. Yes, sir.

Q. When did you get over there? A. I arrived in Baltimore approximately 5:15 or 5:30 on December 20th.

* * * * *

Q. Now, when you arrived at central headquarters of the Baltimore City Police on December 20, did you have occasion to see this Defendant? A. Yes.

86 Q. Where was he when you first saw him, Officer? A. When I first saw him he was having a cup of coffee and eating two egg sandwiches.

Q. In the precinct? A. Yes, sir.

Q. From that point on, how long was this Defendant-- well, you took him back to Washington? A. Yes, sir, I did.

Q. When you got back to Washington, what time of day was it on Friday? A. Well we hit the District line at 11:30 a. m. and we arrived at police headquarters at 11:45 a. m. on Friday.

Q. Almost noon time? A. Yes, sir.

Q. And the Defendant was transported in what, in the police vehicle? A. In the back of the police cruiser.

Q. And so all told from the time you first saw him up to the time you arrived over at metropolitan police headquarters at 3d and Indiana Avenue, how long were you in this Defendant's presence? A. I would say approximately eight hours.

Q. You had occasion to observe his actions, did you not, sir?

A. Yes, sir.

Q. You had occasion to converse with him and talk with him?

87 A. Yes, sir.

Q. You had occasion to --

MR. OWEN: May I interrupt here to ask leave to interpose the same objection that has been interposed as to the previous witnesses on this point?

THE COURT: Yes.

MR. OWEN: Thank you, Your Honor.

BY MR. LOUTHER:

Q. You talked to him both over at Baltimore City police headquarters? A. Yes.

Q. And also in the cruiser coming back? A. Yes, sir, I did.

Q. And now, how long have you been on the force? A. It will be six years in October.

Q. Now, during the period of time that you yourself have been on the police force of the metropolitan police department in Washington, have you or have you not had occasion, in your line of work, to observe people who in your opinion were of unsound mind? A. Yes, sir, I have.

Q. Now, then, based on -- can you characterize the number you have so seen in your line of duty? A. 137.

88 Q. Now, with respect to this Defendant Niport, and based on the period of time, from the period of time you first saw him at central headquarters up until the time you got over to District police headquarters about 11:45 a.m., December 20 and on your conversation with him, on what he said and what you saw him do, and on your past experience as a District of Columbia policeman, can you tell His Honor and the Jury whether or not in your opinion, at the time you saw him on December 20, this Defendant Niport was of sound or unsound mind?

A. He was of sound mind.

Q. Now, then, Officer Blancato, I want you to answer this question yes or no, if you please, sir.

Were you also in the Defendant's presence and he in your presence after you reached the District of Columbia police headquarters at 11:45, December 20? A. Yes, I was.

Q. Please, sir, will you tell His Honor and the Jury for how long a period of time after 11:45 in the morning of December was it that this Defendant was in your presence? Never mind what was being done. How long did you see him? A. He was in my custody until he was turned over to the United States Marshal at 1:15 p. m. on December 20.

Q. That afternoon? A. Yes.

Q. So that you also had the period of time of observation from
89 11:45 and 1:15 p. m. ? A. Yes, sir, I did.

Q. And you saw him and observed his actions? A. Yes, sir, I did.

Q. Anything abnormal about the way he talked or acted? A. No, sir.

Q. From the time you first saw him until the time you turned him over to the -- who did you turn him over to? A. The United States Marshal.

Q. From the time in the early morning hours when you saw him over in Baltimore City police headquarters until the time you turned him over to the United States Marshal in the District at 1:15 p. m. , December 20, was there anything that you noticed about the conduct, the talk, or the actions of this Defendant Niport that was abnormal?

A. Nothing abnormal at all, sir.

Q. It was your opinion, as far as you were concerned, and based on your experience and based on your observation of him on that day, and at that time, he was of sound mind? A. Yes, sir, it was, and is.

MR. LOUTHER: I have no further questions, Your Honor, at this time.

THE COURT: Mr. Owen.

CROSS EXAMINATION

BY MR. OWEN:

90 Q. Officer, do I understand that you have seen in your life time-- you have seen people who were emotionally ill? A. Yes, sir, I have.

Q. As a matter of fact you have seen exactly 137 in your life? A. Since I have been a policeman.

Q. How many did you see before you were a policeman in your life as you grew up that you considered emotionally ill? A. It is hard to say, sir.

THE COURT: Approximately.

THE WITNESS: Approximately 200 more, I guess.

BY MR. OWEN:

Q. And you didn't feel that Mr. Niport was 138? A. No, sir.

Q. Now, have you ever suffered from any emotional disturbances? A. No, sir.

Q. Let's see. You say you left the District line at 11:30 and were in downtown Baltimore police station at 11:45? A. No, sir. I said I arrived at the District line at 11:30 and got to police headquarters at 11:45 the same morning.

* * * * *

94 JOSEPH JUDD

was called as a witness on behalf of the Plaintiff, duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. LOUTHER:

Q. Sergeant Judd, will you tell His Honor and the Jury your rank, name and assignment, please, in the Baltimore City Police? A. Sergeant Joseph Judd, head of plain clothes squad in the Northwestern District.

Q. Were you so assigned as of the date of December 20, were you not? A. I was the Sergeant in the bailiwick there. Not in plain clothes.

Q. Did there come a time in the morning hours of Friday, December 20, the early morning hours, about 1:20 or 1:30 or 1:40 in the morning that you and Officer Auld had occasion to arrest the Defendant Milton Niport seated at counsel table in the light gray suit? A. Yes, sir.

Q. And what time was it that the arrest was made? A. 1:50 a. m.

95 Q. It was made at the point and premises of 4200 Reisertown Road in Baltimore? A. Yes, sir.

Q. Now, from that period of time after the arrest was made that you first saw this Defendant Niport, how long was he in your presence and under your observation, Sergeant? A. For a period of about 16 minutes.

Q. So that you -- I take it that you did not transport the Defendant from the house to the precinct, is that correct, sir? A. Yes, sir.

Q. Now, how long have you been an officer on the Baltimore City Police Department? A. Fifteen and a half years.

Q. During that period of time, Sergeant, have you had occasion in your capacity as a policeman to observe people who were of unsound mind? A. Yes, sir.

MR. OWEN: Might I interrupt the Assistant District Attorney? Again the same request is made of the court to interpose the same technical objection.

THE COURT: Yes, sir.

BY MR. LOUTHER:

96 Q. Now, Sergeant, as best you can, will you tell His Honor and the Jury the number of such persons who you have had occasion to observe in the past years? A. I would say roughly between 180 and 190.

Q. Now, then, you had occasion in the house at 4200 Reisertown Road to hear this Defendant Niport talk, did you not? A. Yes, sir.

Q. And you observed his actions? A. Yes, sir.

Q. Was there anything abnormal about the way he talked or about the way he acted while he was in your presence for the 16 minute period? A. No, sir.

Q. Based on your observation during that period of time and your experience as a policeman in Baltimore, can you describe to the court and the jury -- can you tell His Honor and the Jury whether in your opinion, at the time you saw him on December 20, was this man of sound mind? A. Definitely so.

MR. LOUTHER: No further questions.

THE COURT: Mr. Owen?

CROSS EXAMINATION

BY MR. OWEN:

Q. Sixteen minutes is the only contact you ever had with this fellow Niport in your life, is that right?

97 THE COURT: Excuse me. Answer that yes or no, Sergeant.

THE WITNESS: That is correct, yes, sir.

BY MR. OWEN:

Q. You are sure it wasn't 17 minutes? A. I estimated my time about 16 minutes. He was in the custody of the police approximately, about 25 minutes. He was arrested at 1:50 a. m. on the 20th of December, and he was booked by the Desk Sergeant at 2:15 a. m. That is about 25 minutes. The running time from 4200 Reisertown Road to the Northwest is about eight and a half or nine minutes.

Q. And is that during the traffic hours or at night time or day time? A. That is at 2:15 a. m. -- 2:05 or when we left there or 2:06, very little traffic.

* * * * *

JOSEPH BONACCORSEY

was called as a witness on behalf of the Plaintiff, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOUTHER:

98 Q. State your name, rank and assignment in the metropolitan police department. A. Detective Sergeant Joseph Bonaccorsey, metropolitan police department, presently assigned to the check and forgery squad.

Q. Now, in the month of December of 1957, last year, Sergeant Bonaccorsey, what was your assignment? A. I was assigned to the robbery squad.

Q. And did there come a time in the morning hours of December the 20th, 1957, Friday, when you had occasion in company with Detective

Sergeant Broach and Officer Blancato to go to the Baltimore City, Maryland -- A. That is correct.

Q. When you arrived there did you have occasion to see this Defendant who is seated at counsel table, did you not? A. I did.

Q. What time was it when you first saw him? A. About 6:40 a. m.

Q. And from the time -- 6:40 a. m. when you first saw the Defendant Niport in Baltimore, how long thereafter was he in your presence that day? A. From that time, 6:40 until 1:45 p.m. that afternoon.

Q. During that period of time you had occasion to see him in Baltimore City headquarters, did you not? A. I did.

Q. And also during the ride back from Baltimore City to D. C. ?

99 A. I did.

Q. Thereafter at police headquarters here in town? A. I did, sir.

Q. Now, you had occasion to, during the period of time you first saw him until 1:45 p. m. that day, hear him talk and converse with you and other officers? A. Yes, sir.

Q. You had occasion to observe his actions? A. I did, sir.

Q. How long have you been a policeman, Sergeant? A. Fifteen years.

Q. During that period of time you had occasion, have you not, sir, to observe people who were of unsound mind as a result of your duties as a policeman? A. I have, sir.

Q. Will you characterize as best you can for His Honor and the Jury as to few or many? A. Oh, around 50.

Q. Now, then, was there anything abnormal about this Defendant Niport's conversation for the period that he was in your presence on December 20, in your opinion? A. There was not.

Q. Was there anything abnormal, or unusual about the way the man acted while he was in your presence? A. It was not.

100 Q. Now, sir, based on your experience as a policeman, will you describe to His Honor and the Jury, and the time and length of time you saw this Defendant Niport on December the 20th -- I assume the court will allow me to --

MR. OWEN: I will interject the same objection.

THE COURT: Yes.

BY MR. LOUTHER:

Q. Will you tell His Honor and the Jury whether or not in your opinion this Defendant was of sound mind on that date for that period of time? A. In my opinion he was of sound mind.

MR. LOUTHER: I have no further questions, Your Honor.

THE COURT: Mr. Owen.

CROSS EXAMINATION

BY MR. OWEN:

Q. Sergeant, you say that you have seen about fifty emotionally ill or mentally ill people in your life, is that right? A. I judge about that number.

Q. Would you say you have seen most of the people who are walking around with emotional illnesses while on the force or before you got to be a policeman? A. Since I got to be a police officer.

101 Q. Did you see any before you got to be a police officer? A. Not that I recall.

Q. Were you able to tell one when you saw one before you got to be a policeman? A. That would be pretty hard to answer.

Q. Was it your police training that qualified you to tell a person who was walking around emotionally ill or not?

THE COURT: I don't know whether you heard his answer or not. He said he didn't remember whether he had or had not prior to being a policeman.

Is that right, sir?

THE WITNESS: Yes.

BY MR. OWEN:

Q. Now, you saw this fellow for a brief period only on one day in your life, is that right?

You can strike brief period. A. For the period stated you mean?

Q. For the exact time. One day in your whole life? A. That is correct.

Q. You have never spent any other time in your life with him, have you? A. No, sir.

Q. Now, you say that in your opinion he was not suffering from any type of mental illness, is that right? A. Yes, sir.

Q. Can you tell me whether or not he was suffering from any physical illness or physical disorder? A. I can not.

Q. Why can you not? A. I am just not able to. I am not a doctor.

Q. You can tell whether he is suffering from any internal emotional disturbance but you can not tell whether --

THE COURT: You are arguing with the witness. He answered your question.

MR. OWEN: I have no further questions.

MR. LOUTHER: May the witness be excused, then, Your Honor?

THE COURT: Yes.

* * * * *

MR. LOUTHER: The Government rests.

THE COURT: You may proceed, Mr. Owen.

MR. OWEN: Your Honor, I wonder if Counsel could approach the bench prior to the proceeding?

THE COURT: Yes.

(Bench conference.)

MR. OWEN: It is counsel's understanding of the law that the case in the situation of the present one, places a burden upon the prosecution to prove as a result of the crime that it was not the product of an emotionally disturbed or abnormal mind, and we do not think that they have carried that burden with the probative evidence that is required by the decisions of the Court of Appeals.

We do not think the few policemen who spent a few minutes with this fellow at the direct time of this unfortunate incident are persons who would have any intelligent estimate of the Defendant's emotional illness or health.

THE COURT: I deny your motion, Mr. Owen. The reason for that being there has been no adjudication of incompetency in this case. I do not think at this time that your motion is appropriate.

I am glad you made it for the protection of the record, and I might say that the only reason the Government put in any evidence

related to the question was as reflected in the record, in the interest of time to keep the witnesses from coming back as you understood.

* * * * *

(End of bench conference.)

THE COURT: You may proceed.

Mr. Owen?

* * * * *

105 We would like to call Dr. Miller. Dr. Michael M. Miller, Your Honor.

If the Government would care to stipulate as to the facts I have just suggested as to Dr. Miller being a famous man in his field, both nationally and internationally, I would waive qualification.

MR. LOUTHER: I don't think I am going to stipulate, with all due respects to the doctor. I will stipulate, however, apart from national and international that Dr. Miller is a qualified psychiatrist, if that will satisfy the defense.

THE COURT: All right.

105

DR. MICHAEL M. MILLER

was called as a witness on behalf of the defense, duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OWEN:

106 Q. Will you give us your full name, sir? A. Michael M. Miller.

Q. And what is your present residence address, Dr. Miller?

A. My office?

Q. At home. A. Well, 6318 Mahoney Road, Glen Echo Heights, Maryland.

Q. What is your business or profession or occupation? A. I am a medical doctor specializing in psychiatry.

Q. Where are you located? A. 2025 "T" Street, Northwest.

Q. This city? A. Yes.

Q. Where were you educated, Doctor? A. I was educated at Ohio State University and the University of Vienna Medical School.

Q. Let me ask you Doctor, what specialized training you have had in the medical field of psychiatry? A. Well, I had training at the Wagner Institute in Vienna and then at the New York State Psychiatric Institute which is affiliated with Columbia University and then in the Public Health Service where I did military psychiatry.

Q. For the Government? A. Yes. Then at St. Elizabeth's Hospital.

107 Q. Now, have you ever written any papers or books in the field of disturbed minds? A. Well, I have written a number of papers. I am working on a book right now.

Q. I see. And what type of papers have you written recently?

A. Well, the recent papers have dealt primarily, mostly with the field of criminology and juvenile delinquency.

Q. And where have you dealt in the field of juvenile delinquency?

A. Well, I have worked as a consultant at Boys Village of Maryland.

Q. State of Maryland? A. It is a training school for the State. And then I am a consultant at Judge Noyes Court. The Juvenile Court of Montgomery County.

Q. Yes. Now, in the field of criminology, Doctor, what is your experience in that field and what are any recent authorities you have developed in the field? A. Well, I got interested in criminology in 1940 when I was a medical director of the Cleveland Work House, a house of correction. And I then set up the first public alcoholic clinic in this country.

Q. The first in the country? A. Yes.

108 Q. What was that date again? A. That was in 1940. The Cleveland Municipal Court. I then got increasingly interested, as I was forced to get interested, in psychiatry in order to deal with problems I was dealing with. I got more and more into the field of psychiatry and have been ever since.

Q. Now, what about the International Institute of Psychiatry or international organization. What is the technical international organization? A. Well, I think you are referring to the International Congress of Psychology.

Q. Yes. Have you not delivered lectures for them? A. I presented a paper last year. That is the International Congress of Group Psychotherapy in Zurich, Switzerland.

Q. Where? A. Zurich, Switzerland. And this year I am asked to give three papers at Barcelona, Spain at the International Congress of Psychotherapy.

Q. Where is that? A. Barcelona, Spain.

Q. And when is that to be? A. In September.

Q. I assume we are all invited?

109 THE COURT: Now, Mr. Owen, let's not be facetious about this matter.

MR. OWEN: Well, I can go on, Your Honor, if Your Honor is not satisfied.

THE COURT: I am not asking that. I ask that you not be facetious.

MR. OWEN: As to the gentleman's qualification I would tender him to the court at any point.

THE COURT: It has been stipulated that he may express an opinion as a psychiatrist.

MR. OWEN: Oh, oh, I thought I was trying to satisfy the court as to his qualifications.

THE COURT: Ladies and Gentlemen, it is not necessary for me again to say to you that when a stipulation is reached there is no challenge.

BY MR. OWEN:

Q. Let me ask you, Dr. Miller, whether or not you have had occasion to look into the matter of Milton Niport, and the unfortunate incident that we are all here today to consider a hold up or stick up of a real estate office at Third and H, I believe it is, in Northwest, Washington, D. C.? A. Well, I had occasion to examine Milton Niport.

Q. When was that, sir? A. On March 7, 14th and 21st of this year.

Q. Was that at the local jail or over at St. Elizabeths or both?

110 A. Both.

Q. You conferred over at St. Elizabeths? A. Yes.

Q. All right, sir. A. I found that Milton Niport represents a victim of the kind of family climate or family environment that so many youngsters have suffered in our time.

Milton is one of four siblings, two brothers, one recently deceased and a sister.

One brother is an attorney and one of the sisters a graduate nurse.

There has always been considerable sibling rivalry, particularly with the sister which apparently was encouraged by the father's very close attachment and contact. A continuous display of affection to this sister while withholding the demonstrative affection from Milton and the boys.

Q. Doctor, may I interrupt you just a moment? For the purpose of keeping the record clear, I believe I probably should, at this time, ask you whether or not you came to the conclusion that Milton Niport is emotionally disturbed? Is he emotionally ill or is he emotionally defective in any way? A. I was merely trying to give the background for my conclusion.

111 Q. I see. A. I think that is necessary to get the full picture.

Q. Let's just take up the definitive conclusion. The answer is yes or no? A. Well, my answer is that he is a sick person.

Q. Mentally? A. Yes, mentally sick.

Q. Now, let me ask you further, through your professional investigation, do you feel that the incident on December the 17, I believe it was, was a product of this emotional disturbance or illness? A. It is my opinion that it was.

Q. Now, if you would go forward and give us your reasons and technical background and so forth before you were interrupted. A. The father ruled the roost with an iron hand. He was an authoritative personality. A very willful, compulsive person who would tolerate no opposition.

THE COURT: May I interrupt you, Doctor, to ask you is this a history that you got?

THE WITNESS: This is a history which I got.

THE COURT: From whom?

THE WITNESS: From the family and from the patient.

113 THE COURT: Where you can specify from whom so stated, will you?

THE WITNESS: Yes. As he -- and although he didn't show any gross intolerance of Milton while he was quite young, when he reached pre-adolescence father became increasingly severe with him. He permitted him little opportunity to play with other children and imposing very painful discipline.

Milton in contrast to his brothers dogmatically and stubbornly resisted his father's will.

In his early teens he had to spend most of his free time working in his father's liquor business, something that Milton never appreciated. He couldn't see much sense in the liquor business or making money but the father's life was entirely making money and selling liquor.

THE COURT: This history you are giving us now was extracted from whom?

THE WITNESS: This is from Milton. I got some of it, confirmation of it, Your Honor, from his brother.

THE COURT: I am not criticizing. I am trying to understand you. This is what the Defendant told you?

THE WITNESS: Yes.

THE COURT: When you part from his statement will you specify from whom?

THE WITNESS: All right.

113 Milton went on and he pointed out the father would never permit him the opportunity to associate with his peers or the opposite sex.

It is interesting that although the father himself had never given this boy any companionship or love he also denied him the opportunity to get it elsewhere and with the opposite sex.

He didn't recognize or realize the boy's needs.

Beginning in his teens Milton then developed various defenses such as sneaking dates because father would disapprove of his contact with the opposite sex. In other words, girls and women were bad and constituted a danger and a boy should not have any such associations. They would take money from him. They would use him and so on.

Father was always concerned about the cost of these things, going with girls and all. Father repeatedly deprecated women. He used foul terms such as they are all bitches or whores. On occasion after he had gone out on a date against his father's will father would lock him out of the house, put a yale lock on and lock him out of the house and make him stay out on the street all night because he had defied him.

As a matter of fact, when he was about three or four years old Milton was taken into court. Now the father apparently permitted this because he had walked across the lawn --

114 THE COURT: Doctor, this Defendant didn't tell you that he was taken to court when he was three years old?

THE WITNESS: This is a matter of record, Your Honor.

THE COURT: All I am asking, Mr. Owen, is he specify the source of his material, if he will. It is clear to me that a three year old boy is not going to tell when he went to court.

MR. OWEN: This came from the family, Your Honor. His first brush with the law at a very early age.

THE COURT: All right. Specify to the court the source of your material, please.

THE WITNESS: -- taken into court because he had walked across the lawn of the lady next door.

During that period of his life when in his formative years, three or four years of age, he was under the care of the housekeeper who would repeatedly pinch and hit him whenever the mother was not looking. He was apparently sadistic.

His deceased brother Lennie who was older also teased him a great deal.

As the patient grew older --

THE COURT: I don't know if the Doctor is able to answer my question or not, Mr. Owen, but he certainly is not responding. I am appealing for you now to get some particularization here so we will know the source from which this material is coming.

115 MR. OWEN: Well, Your Honor, of course --

THE COURT: I know a three year old boy is not relating an experience of that sort and the jury -- we have a void.

MR. OWEN: Well, of course, I wasn't there and I can only rely on what his family had told us and --

THE COURT: Mr. Owen, I am not asking you to be there. All I am asking this Doctor is that if he got it from some source, I ask him to say what source.

MR. OWEN: I believe he explained, Your Honor. From the family and the boy himself.

THE COURT: Doctor, I am trying to ask you to particularize. You understand that term? Whether it came from the A. B. or C.

THE WITNESS: Yes. I want to explain, Your Honor, I am giving the case history which is made up of from what I got from him and I tried to confirm these findings. All of this was given to me by Milton, but was confirmed by the history I got from the family.

THE COURT: Doctor, you are not saying to me this boy told you what he did at three years of age?

THE DEFENDANT: And I remember it to.

THE COURT: Did he tell you that, Doctor?

THE WITNESS: He remembered that.

THE COURT: He told you what happened at three years of age?

116 THE WITNESS: It is possible to remember.

THE COURT: I am not asking you if it is possible. I am not a psychiatrist. I am asking you if he did himself tell you?

THE WITNESS: He told me and his brother told me.

THE COURT: That is all I am trying to get at.

THE WITNESS: He told me at his present age, Your Honor, not when he was three years old.

THE COURT: I didn't understand you. You just told us you didn't see him until recently.

THE WITNESS: I want to clear up the misconception that he had told me when he was three years old.

THE COURT: I had no such misconception. You have stated that you saw him on the 7th of March, the 14th, and 21st of 1958.

THE WITNESS: That is correct, Your Honor.

THE COURT: All right. Will you proceed, please, Doctor?

THE WITNESS: His deceased brother, older brother Lennie, also teased him a great deal according to his story. As the patient grew older he in turn resorted to teasing other boys, particularly when he felt stronger and when they felt afraid of him.

117 Milton tells us how his father continually made his life miserable. How he drove his friends out of the home and always interfered in whatever he wanted to do.

The father constantly deprecated him, telling him he was a disgrace to the family, the worst of his three sons and that he would never accomplish anything.

Now, it was an interesting thing that all the way through this case history, and the entire picture of the case, it became increasingly clear that the reason that the father could not tolerate Milton was primarily because Milton was so much like himself.

That Milton docmatically and defiantly opposed the father and Milton had unconsciously internalized his tyrannically character of the father and had become like him unconsciously without realizing it.

Now, he had discovered even as a young boy that there was one way in which he could strike back at father. To father his dignity, his pride, his name, his social status meant everything. He was very concerned about his credit, his business reputation. He was very concerned about his name, that no scandal be attached to his name. And Milton discovered that the way to manipulate father was to get in trouble.

If he could get in trouble this was one way that he could manipulate father.

118 Father couldn't bear for him to get into trouble because that meant the possibility of scandal, and prestige was vitally important to his father. So that Milton found that it was most satisfying to himself that, for example, when he was a little boy that he might refuse food in order to hurt his mother or father. He felt because he hurt mother he was hurting father. He knew that father was sensitive to this.

By punishing himself he could strike back at his father. By getting into trouble and hurting himself he could directly strike his father. He discovered that this method worked very well and whenever he would have difficulties with his father in his later years, when they were having a severe argument, a severe conflict, would go right out and get into difficulties.

And many of these difficulties that he would get into were senseless from a monetary point of view or material point of view. They were pointless, but they would succeed in accomplishing the objectives that he wanted to accomplish, namely, to bring scandal and disrepute upon the name of the family.

BY MR. OWEN:

Q. Doctor, I might interrupt, would you say that the hold up or stick up in this case, was a motive for monetary gain or money? A. No. I think that the motive of this, the real motive was to strike back at the family.

119 Whenever the family refused him, whenever the family denied him love or what symbolized love to him then he would strike back at them by getting into difficulties. The name of the family on the front pages of the Baltimore papers --

Q. Did you learn in your investigation of any instances when and how he did get his name spread across the headlines in a bad way?

A. Are you referring to this robbery?

Q. Not this one in particular, just in the past. A. Well, there are numerous instances of the -- I didn't go into the various instances in detail because of my limited time. I wanted to study the emotional background. The psychiatric background of the case.

Q. Let me ask you, Doctor, in the usual case of a criminal coming in and sticking up the place, what is the motive? A. Well, the motive is usually intent to rob.

Q. To gain profit or money? A. Yes, usually.

Q. Would you continue from where I interrupted, Doctor? A. It was interesting with reference to his offenses that in general they showed the same pattern. He would always -- he would never take many steps to really defend himself or protect himself, would usually manage to get arrested shortly and apprehended shortly after the offense. But he unconsciously -- he really wanted to really punish himself and
120 inflict this shame on his family.

Q. Do I understand that you meant he wanted to get caught? A. He unconsciously acted in a masochistic manner. A self-punishing manner.

Masochistic means to hurt self in order to hurt somebody else. In this case it was his family, particularly his father, and then the rest of the family who followed the directive of his father.

THE COURT: Doctor, I am interested in your statement that the offenses followed the same pattern, namely, that he sought to turn himself in or not go far away from the scene of the crime. Is that what you meant?

THE WITNESS: Generally, Your Honor, he would take no rational or logical steps to really -- effective steps to keep himself from being apprehended.

THE COURT: I am curious because I understood you to say in response to Mr. Owen's question that you had not gone into these offenses.

THE WITNESS: Well, I had but I had not gone into them intensively. Mr. Owen furnished me with a statement of some of his offenses. May I have that statement -- I had occasion to refer to that. Would you like to see it?

THE COURT: No. I was curious to know what you meant by the same pattern. I understood you, in response to Mr. Owen's to say that
121 you had not gone into the offenses.

THE WITNESS: I had not gone into the offenses themselves in great detail, Your Honor. I had read these statements which covers most or all of the offenses as far as I understand and the pattern is precisely similar.

THE COURT: I don't want to interrupt you, Mr. Owen. But my only point was I was assuming he had gone into these particular offenses. He was going to state he gave himself up or something of that sort.

MR. OWEN: It is my understanding from the question I asked him, Your Honor, that I was calling for addresses and cities and towns and exactly the different -- he had been convicted many times. He has been convicted of serious robberies and felonies all of his life, and evidently the Doctor had not memorized the instances that were involved, but they are recited in the paper which he used in making his story of the case.

THE COURT: This paper is what?

MR. OWEN: It is a complete factual statement prepared by the family of the background of this boy as they have seen him develop.

THE COURT: All right.

THE WITNESS: It is interesting that Milton as a boy had fantasies which were accentuated by his father's very early over indulgence. His father, when he was a little boy, would try to buy him materially, trying
122 to bribe him, wouldn't give him love but he would try to win him over with a toy or something of that sort.

Then when his father's attitude changed radically, particularly

pre-adolescence, where it became marked and Milton's contraceptor, megalomatic conception of himself -- you know the little boy pushing the toy soldier around the court. He is a field marshall in his fantasy. He feels very important and suddenly he begins to feel all the world is pushing him around. He feels overpowered, and this megalomatic conception of himself is then shattered.

He was unable to adjust satisfactorily to this change.

His father's excessive and uncompromising demands deeply upset him.

Since Milton had never been able to freely express his resentment toward his family, particularly his father, would unconsciously protest by getting in difficulties, sabotage his school work, as I mentioned in a similar way, knew how to get back at father.

Father wanted him to be tops in the class or in some way openly embarrass his father and the family.

He had discovered early that father was acutely conscious of being a Niport, that had a stamp of something in the community.

123 Thus unconsciously he had found a way to get revenge on his father and the family.

They had all become Niport conscious.

He learned from his preliminary efforts he could really hurt his father by hurting himself, and we had some discussion. He recognized this more clearly. He stated: I didn't need this money. What I did makes no sense to me whatever. But I do remember how I felt a bitter satisfaction out of the smearing headlines in the Baltimore papers. I thought of how ashamed my father would feel. He had to learn the hard way. Me too, I guess. What stubborn fools.

My parents told me a number of times how ashamed they were of me and how I was blackening the family name.

Everything was fine in the beginning when I came out on parole. Then their attitude changed. I sensed they would drive me to do something again. I told mother then by not helping me financially and not trusting me, severely curtailing my freedom, you are forcing me to go bad.

The first few months are the crucial months for a successful adjustment, he went on. I can't understand why they spend so much in lawyer fees and time and trouble to help me and then to abandon me when I need their help and understanding badly for just a little while longer.

They have resorted to giving me the same old treatment again that had gotten me disturbed and into trouble in the first place. The family I
124 concluded wanted me under their control and they wouldn't trust me and that hurt so deeply.

My conclusion is that this patient is suffering from a very severe masochistic neurosis.

The attempts to protest the treatment he has received at the hands of his family and his father, particularly. By embarrassing and humiliating them, by unconsciously inflicting punishment on himself, it is as if his unconscious is saying "I wouldn't be in this unfortunate position if you had only given me a little love, tolerance and understanding. Why did you do this to your own son? Why did you want to ruin his life?"

Even when he committed his offenses Milton always committed them in such a way that he would soon -- as I pointed out -- be apprehended and punished. It was as though he had consciously wanted to be caught.

There is absolutely no logic or real basis for his acts. He never really had to do what he did to obtain money.

This patient could benefit greatly through treatment. He has been ill and confused for a great many years. As a sick young person he needs understanding and humanitarian professional help rather than punishment.

I understand his family are willing now to cooperate in whatever way to see that he gets the help that he needs.

Q. Doctor, I might ask you, what are -- now, you -- have you ever in your years of experience with emotionally ill people seen any
125 similar cases, not exactly the same but similar cases? A. Quite a number.

Q. Now, let me ask you Doctor, whether or not you have ever seen similar cases that -- if the court will allow me to withdraw the question

and reframe it this way: Is there any chance for help in cases like this for straightening up that twisted subconscious mind that drives him to do these things or get into trouble? A. There is.

Q. And what kind of treatment is usually recommended in the psychiatric field? A. Well, he needs insight to his problem. He has gained quite a bit of insight already in the brief discussions that we had.

I think he has gained a great deal of insight. He is intelligent.

Q. Now, about how long does this type of mental illness, from your experience with it, how long -- the ones that have been cured, how long does it take to effect a reasonable adjustment where they can take their places in society?

THE COURT: I wouldn't permit the District Attorney to ask that question, sir. I don't know if you want to ask it or not. I am not going to prevent you from doing it.

BY MR. OWEN:

126 Q. I want to know -- will you describe to us something of the nature of the twist in his head or mind and now I would like to know about how long, by way of prognosis, you would say that modern intensified psychiatric treatment would be required to cure such a case, and first of all, could it ever be cured? A. He can very definitely be cured, but the time that it would take depends on a number of factors.

Q. Give us an idea of how long from different cases similar to this that you have seen worked on successfully or unsuccessfully. A. Well, it might take from one year to fifteen years. I mean, it depends and it may never occur. It depends on the quality of the treatment.

Q. I see. A. Usually he will respond in one or two years to the right kind of treatment.

MR. OWEN: Will Your Honor indulge me for a moment?

THE COURT: Certainly.

BY MR. OWEN:

Q. Now, is a masochistic neurosis known in the psychiatric field as a mental illness or abnormality? A. Yes.

THE COURT: Do you want to ask whether it is a mental disease or defect?

127

BY MR. OWEN:

Q. Is it considered a mental disease or mental defect? A. It is a mental disease.

THE COURT: It is your opinion that it is a mental disease?

THE WITNESS: Right.

MR. OWEN: Thank you very much, Dr. Miller.

Your witness, Mr. Louthier.

CROSS EXAMINATION

BY MR. LOUTHER:

Q. Doctor, this Defendant Niport when you talked to him he had a pretty good memory, didn't he? A. What do you mean?

Q. Just what I said. He had a good memory, didn't he? A. He told me everything he could remember.

Q. He remembered things that happened back when he was only three years old, didn't he? A. Well, he had happened to remember this incident because it stood out in his mind and, of course, in my practice as a psychiatrist I found this is nothing unusual.

Q. He had a good memory? A. Does this appear unusual to you?

THE COURT: You are not here to ask counsel. They are here to ask you questions.

BY MR. LOUTHER:

128

Q. He had a good memory, didn't he?

THE COURT: Did you deem him to have a good memory?

THE WITNESS: I believe his memory is intact.

THE COURT: I don't know what that means.

THE WITNESS: Well, intact, Your Honor, means functioning normally.

THE COURT: Does it mean that to a lay person like me and the jury that it is good or bad?

THE WITNESS: Good, Your Honor.

THE COURT: Thank you.

BY MR. LOUTHER:

Q. Let's see. Now, you talked to this Defendant Niport for the first time when, Doctor?

Don't you remember yourself without looking at your notes?

A. I am not perfect you know. I am only human.

Q. Excuse me. Go ahead. A. I don't like the progressive attitude, Your Honor. I think the Corporation Counsel is entitled to --

THE COURT: You answer the question, if you will, please. You are here subject to cross examination and the --

THE WITNESS: Not to be insulted, Your Honor.

THE COURT: If you will permit me to finish we will get along a lot quicker, sir.

129 As long as I am addressing you, sir, you might look at me instead of at the jury.

This is quite a proper cross examination and you may proceed, Mr. Louthier.

BY MR. LOUTHER:

Q. Will you give us the date, Doctor, the first time you examined this Defendant Niport? A. March 7, 14 and 21 of this year.

Q. Now, on the date of March the 7th when you first saw this Defendant, where did you see him, Doctor? A. I saw him at the District jail.

Q. And how come you to go to the District jail, Doctor? A. I was asked to go by his attorney.

Q. And how long did you talk with the Defendant at the District jail on March the 7th, 1958? A. I would say approximately an hour and a half. I can not recall exactly.

Q. That was in the presence of counsel, Mr. Owen, is that correct? A. No.

Q. Between yourself and -- A. Between me and the Defendant.

Q. And at that time, you asked this Defendant certain questions, did you not? A. That is correct.

Q. And he gave you the answers? A. That is correct.

130 Q. He talked rationally and normally, did he not? A. That is correct.

Q. And he recalled things for you when you asked him questions, did he not, Doctor? A. That is correct.

Q. And you talked for a period of an hour and a half? A. About an hour and a half.

Q. Now, at the conclusion of your talk with this Defendant Niport, the first date, March 7, 1958, did you come to a conclusion at that time that this Defendant was suffering from what you described as a masochistic neurosis? A. I had a certain hypothesis in my mind, but I wasn't sure. I wanted to probe into the case further for further study.

Q. Now, then, were you paid a fee for your visit on March 7, 1958? A. I was paid a moderate fee.

Q. What was that? A. \$50 was for all three visits.

Q. Now, then, the next date was March what? A. Fourteenth.

Q. Where did you talk with this Defendant then? A. I talked with him at the District jail.

Q. And how long did you talk with him this time? A. Approximately the same time.

131 Q. An hour or an hour and a half? A. Yes.

Q. And that was between yourself and him and no one else present? A. That is correct.

Q. And you asked him questions and he gave you answers? A. Yes.

Q. And he talked rationally, remembered things, did he not? A. Yes.

Q. When was it he first told you about his father bearing down on him? Was that the first interview or second one? A. Well, he told me about that on each interview, that seemed to be on his mind a great deal.

Q. Now, then, as of the end of the second interview on March, the second date in March, had you come to a definite conclusion and opinion in your mind, Dr. Miller, that this Defendant Niport was suffering from a masochistic neurosis? A. On the 21st, you say?

Q. The middle visit whenever it was. A. I had that opinion, yes, but I wanted further confirmation.

132 Q. You still weren't sure in your own mind? A. I never make an opinion until I study a case as thoroughly as I can under the circumstances.

Q. That is -- A. I form my opinions afterwards, you see.

Q. As of the end of the second visit you were not sure in your own mind? A. I was pretty sure in my mind. I wanted further confirmation.

Q. Now, then, you visited and talked with this Defendant a third time, did you not? A. On the 21st of March.

Q. Where was that? A. The 21st of March, I may have seen him more than three times. I don't recall because I saw him again at the St. Elizabeths Hospital. Whether I saw him on the 21st at the District jail or at St. Elizabeths I am not positive but I believe I saw him four times. I will have to check on that.

Q. You think the 21st -- March 21 visit was at the jail or St. Elizabeths? A. I think at St. Elizabeths. I am not positive.

Q. How long did you talk with the Defendant at St. Elizabeths?

133 A. About the same time.

Q. An hour or an hour and a half? A. About an hour.

Q. When you went to St. Elizabeths you also talked with Dr. David Owens of the staff? A. I had no opportunity to talk with Dr. Owens.

Q. You did not? A. No. I didn't know Dr. Owens was his doctor. I talked with Dr. Cushard.

Q. And you knew at the time you went to St. Elizabeths that this Defendant was over there under court order for observation, did you not? A. Yes.

Q. For a thirty day period? A. Yes.

Q. How long did you say that the date of your talking with this Defendant Niport at St. Elizabeths was, either March 21st or a subsequent date? A. 21st, I believe. It was correct. I am not positive. I would have to check on the record.

Q. Where did you talk with him at St. Elizabeths? A. I talked to him in a kind of vestibule at Howard Hall. They have no visiting room there.

Q. They made a place as such they had available? A. You sit in the hall way and talk to the person.

134 Q. That was again between yourself and this Defendant? A. Yes.

Q. You asked him questions and he gave you answers? A. Yes.

Q. And you understood him clearly? A. That is right.

Q. Now, based on your examination, Doctor, of this Defendant Niport, was he of sound or unsound mind as of the date of your last interview on March 21, 1958? A. In my opinion he was of sound mind then. But it was suffering from these emotional disorders.

Q. Now, then, I take it that you also have an opinion as of the date of the crime for which he stands trial in this court today, namely, December 16, 1957, sir, that this Defendant Niport was also of sound mind then, was he not? A. In my opinion he was not of sound mind at that time.

I believe he was disturbed emotionally to the point he could exercise no rational control. He could not distinguish between right and wrong.

Q. As of December 16? A. That is my opinion.

Q. I realize that.

So you say in your opinion, based on your examination and talk with this Defendant during the month of March of this year, that back in
135 December 16, 1957, he was of unsound mind? A. You are referring to the date of the crime?

THE COURT: I think I may have misunderstood either you or the Doctor. The Doctor says the crime and I understand that to be December 16. Did you say March?

MR. LOUTHER: No. I said December, Your Honor.

May I rephrase it?

THE COURT: Yes.

BY MR. LOUTHER:

Q. All I am asking you now, sir, did you form an opinion, as to whether on the date, December 16, 1957, this Defendant Niport was of sound or unsound mind? A. In my opinion he was not of sound mind.

Q. What was he suffering from as of the date of December 16, 1957, Doctor? A. In my opinion he was suffering from a deep emotional disturbance which was based on this very deep neurotic condition and at that time it had manifested itself in a strong outburst of emotion which

overwhelmed his conscious controls. A kind of temporary insanity.

Q. You mean he didn't know what he was doing on December 16, 1957, in your opinion? A. That is right. In my opinion he could not exercise rational judgment.

136 Q. You mean he was suffering or was urged on by an irresistible impulse to do what he was doing on December 16, 1957? A. That is correct.

Q. Well, did he know what he was doing on that date, Doctor, that he was wrong? A. I don't think that he had any clear conception of what was right and wrong. I think he acted on a blind irresistible impulse.

Q. Under this -- well, is this blind irresistible impulse which in your opinion motivated this Defendant Niport on December 16, 1957 to hold up the Tsintolas Realty Company, is that the same as this masochistic neurosis that you told us about? A. That is related to it.

Q. What is the relation? A. The relation is that the neurosis represents a deep emotional disturbance, you see, which at times expresses itself in hurting himself and at times hurting others, and at times it reaches a point of intensity depending on external factors as in this case, the influence of the family or the father which is very, very disturbing to him and that when he gets into this acute emotional disturbance he acts under this blind irresistible impulse.

Q. How old is the Defendant Niport's father? A. The father?

137 Q. Yes. A. I don't know. The father is now deceased.

Q. Oh. He is. When did he die? A. He died before this last episode.

Q. When did he die? A. I don't know the exact time. Within, I believe, the past year.

Q. You mean that this urge to get back against this overbearing father lasted even after the father died? A. That is correct.

Q. And you don't know the date of death? A. I don't know the exact date of death, no.

Q. Now, then, -- A. May I explain? Do you want me to elaborate on this question?

MR. LOUTHER: If Your Honor please, I suggest that may be brought out on redirect.

THE COURT: All right.

BY MR. LOUTHER:

Q. Now, then, Doctor, did you conduct a physical examination of this Defendant Niport at any time? A. No, I didn't.

Q. And you are not prepared to state whether or not he was in good physical condition at the time you talked with him? A. No, I did
138 not examine him.

Q. And you had stated, I believe, sir, in substance that the way this masochistic neurosis operates is that the Defendant wants to get back at an over-bearing father, consequently he goes out and does a bad thing in the instance that we speak of now in the Tsintolas Realty Company, and would take no rational means to keep from getting caught, is that right? A. That is my opinion. I mean there is no real plan to make a get away. A professional criminal usually has a plan.

Q. If that be the case, Doctor, namely, sir, as I understand you, that this Defendant was motivated, in your opinion, on December 16, 1957, with this irresistible impulse, based upon a masochistic neurosis because his father was over-bearing to him and he wouldn't want to get a way because he would want notoriety brought upon the family.

Can you explain or do you have an opinion as to why, after he robbed Miss Tsintolas that he just didn't walk out of the front of the store and stay there with the gun until the police came there and got him?

A. Because in these conditions the individual is very often confused. He is torn between allowing himself to be caught or to surrender. At times a desire for self-security, to preserve his own physical security and to get away, and in this state of confusion he may take off. He may take off for a ways and then remain in a state of doubt and indecision, but in the
139 end he usually manages to get caught. It is just like in Dostoevski novel Crime and Punishment where Kalmekoff, how in the end he always contrives some how to get caught because of his inner guilt.

Q. Does he want to be caught? A. He unconsciously wants to be punished.

Q. He doesn't want to turn himself in, does he? A. Yes. That is part of being punished. You have to be caught to be punished.

Q. Now, then, Doctor, say at the present day this man is of sound mind -- A. He is of sound mind but he is still suffering from this underlying neurotic disorder.

Q. Well, this underlying neurotic disorder, I understood it was directed against an over-bearing father.

Now, the father is deceased. Who is it directed against now?

A. That is what I wanted to explain. If you remember I read his statement which was directed at the family. When he expressed his bitterness because they let him down after he came out of prison in Massachusetts.

Now, the family was doing to him what the father had done to him before.

We have to remember that the unconscious mind is not as discriminatory as the conscious mind. The unconscious mind lives according to the pleasure principle. The conscious mind lives according to the reality principle.

Now, the unconscious mind, there is a blind indiscriminatory type of emotional feeling. Anyone that stands in your way can be identified with an oppressive or frustrated person. In this case the family used the methods of the father.

Q. Now, who in the family, since the father is now dead, and has been dead, who in the family is this masochistic neurosis, in your opinion, that this Defendant is suffering from, who is it directed against now? A. It was in this was directed against the person that I feel he wanted love from and understanding from very badly his mother. In the last instance you see he felt that his mother ought to come through. Father didn't come through.

Q. Excuse me. Didn't you make a statement that this Defendant said to you that one of the ways that mother had not come through was she had not given him financial help? A. That is true. But you see in the conscious the process is, for example, if a child is refused a bicycle what does he do? The bicycle symbolizes love. The parent gives the

child a bicycle because the parent loves him.

Now, if the child doesn't get this bicycle he is apt to go out and steal the bicycle because this bicycle symbolizes the love which other
141 children get from their parents, but which he didn't get and he is going to take this symbol of love for himself.

It is as if nobody loves me, nobody cares. So I will just have to look after myself.

Q. A lot of material upon which you base your diagnosis, Doctor, was material given to you by this Defendant, was it not? A. A lot of it was.

Q. Yes. And other than himself did you talk with his brother?
A. Yes, I did.

Q. Did you talk with this Defendant's mother? A. I had no occasion to talk with her. She was in Florida at the time.

Q. Who of the family, other than the brother, did you talk with?
A. Just with the brother.

Q. And the brother is the attorney? A. Right.

THE COURT: What is his name?

THE WITNESS: Jerome Niport.

BY MR. LOUTHER:

Q. Now, then, at the time that you talked with this Defendant and he told you things on the dates in March that you have mentioned,
142 Doctor, was he of sound or unsound mind during that period of time? A. In my opinion he was of sound mind but suffering from this underlying deep neurosis, this neurotic disorder.

Q. Now, then, did you consult at all with Dr. David Owens from St. Elizabeths in any way, shape or form?

THE COURT: I think he answered no.

BY MR. LOUTHER:

Q. At any time? A. No.

Q. And you classify this masochistic neurosis as a mental defect or a mental disease? A. Mental disease. I use the term mental illness but that would be called disease rather than defect. It is a functional

disorder while a defect usually refers to an organic disorder.

Q. Yes, sir.

MR. LOUTHER: I have no further questions.

REDIRECT EXAMINATION

BY MR. OWEN:

Q. From the best I can understand it, Doctor, you think that this emotional disease would very likely cause him to go right back and commit similar wrongs again and get himself in trouble again? A. I seriously doubt that at this point. I feel that he has more insight now.

143 But I feel that he still needs treatment.

MR. OWEN: I have no further questions, Your Honor.

Thank you very much.

THE COURT: Doctor, you said one thing that interested me. You spoke of a person, a child being denied a bicycle and being denied a bicycle that it added up to an absence of love.

Earlier did you state that the father tried to buy this boy off with gifts instead of love? Are they synonymous or not?

THE WITNESS: That is a good point, Your Honor. When he was very young, if I may explain, the father used this method. He would try to bribe him with gifts. He couldn't give him demonstrative love. This was confirmed by his brother who said none of the siblings got demonstrative love from their father.

But father would give them, when they were little particularly, he would give them gifts. However, as they got older father had the attitude that the way to rear a child was to have a very compulsive regime. A very authoritarian and forceful methods, and he became increasingly difficult. He thought that this was a good way to rear a child that you build character by imposing an absolute will on the child. Of course, what he didn't recognize is that the child in its development tends to internalize the tyrannical authority to which it is exposed.

144 Unconsciously a child under a tyrant becomes a tyrant. Under a sadistic person becomes a sadist. It is an internalization of the oppression as a defense against the oppressive parent.

THE COURT: I was trying to particularize on the different lines. I thought you said that the gifts as distinguished from love which existed, according to the history you got from the Defendant in the early stages of his life, and you then later in your testimony gave an example of a boy being denied by his parents a bicycle. He treated that as absence of love and then he went out and sought it himself.

THE WITNESS: Well, of course, a gift can be given as a bribe on an act of love. It depends upon the intent of the motive, Your Honor. Is that what you mean?

THE COURT: No, sir. I thought it was a different way. I thought you were giving it as determined by the Defendant, to be particular.

In other words, you said this boy, who was denied a bicycle, would use self help to get it because he felt there was an absence of love being manifested upon him.

Therefore, I asked you whether or not this Defendant when the father gave him these gifts that he was in that manner manifesting a love toward him.

THE WITNESS: Well, in a child that happens.

145 Apparently this did not happen later and when helped initially given him things and later withdrew and not giving to him this was felt as traumatic, you see. In other words, it wasn't consistent. And he still was anticipating the love and gifts and things that he might have gotten as a little boy.

What we are told from the brother and what he has communicated from the mother to me through the brother, was that there was never any demonstrative warm love. There was never any companionship which was one of the real criteria of parental love.

THE COURT: Turning to a totally different subject the Defendant in this case, Doctor, is that this man went in with a gun into this business establishment after pretty well casing the place. In other words, had been seen looking in and observing and marking his time until everybody was out and then waited until there was a disconnection with the telephone and then he came back of the woman suddenly with a gun and demanded money of her, extracting from her, as a result of that maneuver,

all the money she had within her drawer. I am characterizing it.

Having gotten that and then causing her to place it in his brief case he then wanted to know where her pocket book was and when he was told it was in the back room he then asked her to get the pocket book and bring it and he extracted from that pocket book, according to the testimony in this case, \$4. Four one dollar bills, all the money which was there and then after doing that, still he attempted to find out if there was any

146 other money, and only after he apparently had exhausted the source of supply of the money did he content himself.

Do you see anything there indicative of exercise of motive other than to get all of the dollars in the case?

THE WITNESS: Well, Your Honor, I believe that he was, as a result of this severe rejection by the family, impelled by motives of hurting others as well as himself.

Masochism, you see, has a very interesting mechanism. It is based on a, as a matter of fact, a very stern, in psychoanalytical terms we call super ego or censoring conscious capacity.

Psychoanalysts believe that the criminal, so to speak, has no conscience. This is not true. He has a super ego but it is used in a different way.

This super ego which he interjects, I believe, from his father, this very stern censoring super ego when turned against himself was masochistic. When turned against others, hostile and sadistic. So he could switch on and off. He could turn it against himself or turn it against others. He was a sadistic masochistic personality. And when, you see he felt very deeply hurt and resentful he would become sadistic.

When he felt guilty after the act, he would become masochistic. He would turn upon himself.

THE COURT: His ego would be fathered to a far greater degree
147 by the extraction of \$456 than to the paltry sum of \$4, wouldn't it?

THE WITNESS: Well, he probably didn't anticipate. Suppose that he would get \$4. Maybe he thought he would get more. I don't know.

THE COURT: Any other questions from either counsel?

Mr. Owen? Mr. Stein?

MR. OWEN: No, Your Honor.

MR. LOUTHER: No, Your Honor.

THE COURT: Doctor, you are excused.

MR. LOUTHER: Thank you very much, Dr. Miller.

THE COURT: Maybe this would be a good time for us to recess for ten minutes.

Same admonition as given to you before.

(Whereupon, a ten minute recess was taken.)

THE COURT: You may proceed.

Next witness, Mr. Owen.

MR. OWEN: We would like to call Mr. Jerome Niport, the brother of the Defendant.

JEROME NIPORT

was called as a witness on behalf of the Defendant, duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OWEN:

148 Q. Mr. Jerome Niport, do you think that your brother Milton here is sick in the head or emotionally disturbed?

THE COURT: I think you better show some foundation before he gives his opinion, whatever it may be.

BY MR. OWEN:

Q. Do you think that he is, as the psychiatrist says, suffering from an emotional neurosis or twist in his thinking processes?

THE COURT: I think I will sustain the objection.

Suppose you come to the bench, please.

(A bench conference.)

THE COURT: I want to make sure that you get from this man his opinion because I think you are entitled to it. But you put him in the field where you show no qualifications or anything else. You have a perfect right, as I understand the case, to present an opinion of a person, a lay person provided that you show what his contact was and what he observed.

MR. OWEN: I thought it was understood it was his brother.

THE COURT: All right, sir.

(End of bench conference.)

BY MR. OWEN:

Q. The Judge has suggested, Mr. Niport, that it would be better if we first laid a little ground work with respect to your relationship with
149 this man here, Milton Niport, the Defendant in this case.

Do you know him? A. He is my brother.

Q. And how long has he been your brother? A. Since birth. 1933.

Q. And did you all live together most of your life? A. We did.

Q. Now, what is your business occupation or profession? A. I am an attorney in the State of Maryland.

Q. And where did you go to school? A. The University of Baltimore, Maryland.

Q. And where did -- that is where you got your law degree?
A. Yes, sir.

Q. And how long -- are you a practicing attorney in Baltimore?
A. That is correct.

Q. Where is your office? A. In the Garrett Building. 609 Garrett Building.

Q. Do you specialize in any particular type of cases? A. General practice.

Q. How long have you been engaged in the general practice of law in Baltimore? A. Since the end of 1952.

150 Q. Now, if you will answer the question that I first propounded as to your views as a lay person; I assume that you have no psychiatric training, or that you are not also a psychiatrist as well as a lawyer?
A. No, sir.

Q. Now, as an average person, like all of us, what are your views or conclusions in your opinion as to your brother's mental stability or mental health? A. Well, from what I have been able to observe as his brother, having lived with him practically all of our lives, if you ask me if he is a stark raving maniac, I would have to say no.

Q. What do you mean stark raving maniac? A. Well, the general picture of a person that you classify insane or to the point he knows nothing at any time.

Q. All right. A. But I definitely feel, from what I have been able to observe of him, from what I know of his actions, there is something wrong with him mentally that he definitely needs help mentally.

Q. How long had you realized this? A. Well, the family has realized it since the time he was just a few years old, a very young child.

Q. Why do you say that? A. Well, he was in trouble practically from the age of three.

151 Q. What kind of trouble was he in at the age of three, sir? A. At the age of three he was summoned to the juvenile court.

Q. In front of a judge? A. Yes, sir. The Juvenile Court of Baltimore City.

At that time when the Judge saw his age he told my mother to take that baby home.

Q. Any other crimes or troubles or problems or stick ups?
A. He has been in trouble all of his life. From the age of ten he was back in juvenile court. He was in juvenile court at the age of 12.

Q. Were these for stealing things, larcenous type crimes, taking property of others, or was it assaulting others. What types? A. No assaults. It was more of a larcenous type of crime.

Q. Has he ever shown an indication or bent towards hurting anyone? A. Never. Not physically.

Q. Has he ever shot anyone to your knowledge? A. No, sir.

Q. Go ahead, sir.

152 From the age of ten and 12 and then what else? What other instances do you want to relate? A. Would the court be interested in hearing more or less of my brief summary of his life?

THE COURT: I think you better let your Counsel--

THE WITNESS: The trouble he has been in.

BY MR. OWEN:

Q. Can you think of any more? We might miss a few but just what you can think of. A. Well, as I say at the age of three he was in juvenile

court.

THE COURT: He need not repeat.

BY MR. OWEN:

Q. We have been up to 12 now. Any more juvenile convictions or crimes or any other court appearances? A. No, sir.

At the age of 13 he caused trouble in a public school. We enrolled him in a military school and a few months later the family was asked to withdraw him.

Q. Did you have to pay at the military school? A. Yes, sir. We had to pay for the full semester and we received no refund.

Q. Was it quite expensive? A. Yes.

153 Q. Was your family able to maintain such a specialized treatment for this child? A. We were and perfectly willing to do so.

Q. Go ahead. What happened after this? A. We were asked to withdraw him from the military school because of his conduct. He was apprehended taking demerits from a demerit box in the Institute. Whenever any of the cadets of the school had done anything wrong the instructors would deposit the demerits in this box in the central hall.

My brother was apprehended taking merits out of this box. Not his own but those belonging to someone else. His he didn't touch at all. But because of this, as I said, we were asked to withdraw him from the school.

Q. You mean your family? A. The family.

And he returned to public school in Baltimore, and at the age of -- he always had a lot of trouble in school. He seemed to not want to conform to the regulations of the school.

He never would follow in a pattern that they seemed to want to set for the students.

As soon as he reached the age of 17 he enrolled in the military service. He enlisted in the Air Force.

Q. Did your parents have to sign for him? A. Yes, they did.

154 Q. Was there any question on the part of either parent as to whether they wanted to allow him to volunteer at the age of seventeen? A. Well, at the time we all sat down and talked it over.

No parent likes to see his child go in service, but they thought perhaps the service would teach him some responsibility and discipline that we up to that time had not been able to do, and even military school had not been able to do or even the public school.

So as I say he enlisted in the Air Force. He was in the Air Force for a total of approximately nineteen months. To the best of my recollection he spent about 12 or 13 months of that time in the stockade.

Q. What do you mean by that? A. The Air Force brig.

Nothing serious at that time. It was more of an insubordination and some absence over leave and things of that sort.

So finally toward the end of his military career, he was brought up before a special court martial in the Air Force in Biloxi, Mississippi at which time he was charged with larceny, was convicted of larceny, petty larceny, I believe it was, and discharged from the service with a bad conduct discharge.

Q. How much was he accused of stealing? A. I don't recall
155 exactly. I am almost positive it was--I don't believe it was even money. I believe it was a jacket or something.

Q. I see. And did your family and father hear of the honorable discharge? A. He did not receive a honorable discharge.

Q. He has a bad conduct discharge and your family heard of it?
A. That is right. Yes. We heard of it.

Q. What was the family's reaction to the bad conduct discharge?
A. I guess the same reaction that everyone else would have except that we more or less expected it knowing -- we were hoping against it. But knowing what had gone in the past, his past behavior, we were not surprised at it.

Q. Now, has the family ever -- the military school was tried. Military service. Has any psychiatric treatment ever been attempted by the family? A. Yes.

Q. First of all is the family well enough to do it. To be able to afford such, what we usually call, luxuries? A. Yes, sir.

Q. And was it attempted? A. It was.

Q. Tell us something about that. A. At the age of about ten, I
156 believe, it was one of the times that Milton was involved in the
juvenile court and he was examined by a psychiatrist for the Supreme
Bench of Baltimore City. It was a woman. I don't remember her name.
And after the examination she told my mother and my father, in prac-
tically these exact words, if they thought they had trouble with him up to
now they were going to have a lot more trouble with him in later years.
And it certainly seemed to be true.

Q. Now, what about the later years after that bad discharge from
the military service and other crimes or things? A. We tried to do
everything we could. We wanted to help him. We thought at that time
he needed some help but he just more or less laughed it off himself.
He refused any help.

Q. Did he continue to live at home? A. Yes, he did.

Q. Did he pay any rent or any food, board bill or anything like
that? A. No, sir.

Q. Has he always been provided for as far as food and shelter
and so forth is concerned? A. Yes, sir.

Q. All right. What other troubles or crimes? A. Well, when he
157 got out of the service, my father at that time had a retail business
and we put him to work in the place, and gave him the opportunity to
work in the place, which didn't work out too successfully. He was either
irresponsible in that he wouldn't show up when he was supposed to. He
would leave the house at 4:00 o'clock in the afternoon to come down to
the business and he wouldn't show up until a quarter of 12. Closing time
was 12:00. If he showed up at all and many times he didn't show up at
all. He never gave any reason for it whatsoever. On a couple of occasions,
one stands out in my mind in particular, my dad, who is now deceased,
was suffering from cancer of the throat and we had taken him to Boston
to a specialist up there for an operation.

And the night preceding the operation my brother, my oldest
brother, who is now deceased also and my mother and myself were up in
Boston with my father and that night my brother Milton, fully aware of

this operation that my father was going through and the seriousness of it had a party at the house. He and a few other girls and boys had a party and they had a real free for all there.

I never could understand it. Here my dad -- we never expected him to come out of the operation, it was a very serious cancerous condition of the throat and Milton was having a party at home while this was going on.

158 Well, and then on another occasion when my dad was being operated on we left my uncle in the store with my brother and he took some money out of the cash register and just ran out of the store and we didn't hear from him for a couple of weeks.

Q. Any further crimes? A. Yes. In the fall of 1952 he completed his Maryland high school equivalency examination for the State of Maryland which was for all intents and purposes just receiving a high school diploma since he quit school to enlist in the service. The family was prepared to send him to the University of Miami. We had bought a home down in Miami. The weather was easier on my dad and made it more comfortable for him. Milton was supposed to enroll in the University of Miami in the fall of 1953, the fall semester, and if I am not mistaken, I believe, he was tentatively accepted to the University, and then in the summer of 1953 he went up to New York to visit some relatives of ours and to the best I am able to ascertain he ran into a gang of boys up there and they went on a hold up spree.

Q. A hold up spree? A. That is correct.

Q. What did they hold up? A. They held up movies, motels, I believe. The crimes covered practically the whole eastern part of the United States, Brooklyn, New York and Manhattan, New York, New Jersey, Miami, Florida, and the last hold up he committed was in
159 Massachusetts where he was apprehended.

Q. How much time did he get? A. He received a sentence of five to seven years. He served approximately three and a half years of that, and my dad had died in December of '56 and just after that my mother got together with my older brother and me and asked if we couldn't

do something to get him out. If she didn't have her husband she could at least have her children around her.

Before we could accomplish that my older brother passed away, just seven weeks after my dad.

I was instrumental in getting him a parole from the State of Massachusetts, and, of course, there were warrants lodged against him from New York, Brooklyn, New Jersey, and Florida, and I made numerous trips to New York and the other jurisdictions and I was successful in gaining a suspended sentence on each and every one of the four remaining hold up charges.

Based on the facts that we thought that the time he served in prison would have taught him a lesson, would have brought him around, so to speak, the fact my mom had gone through so much tragedy in such a short period of time, the Judges graciously saw fit to release him under suspended sentence.

Q. Now, how long had he been on parole or on suspended sentence when he goes right back into the Tsintolas Real Estate place? A. Well,
160 the last suspended sentence was September the 6th, I believe, of 1957. That was the one in Florida.

Q. Did you feel -- did you know whether or not the penitentiary or the imprisonment for the five years, or whatever it was, did you think it made any change in him for the better or for the worse? A. Well, I hoped that it had but after he was out a very short time I began to realize it didn't.

MR. OWEN: I have no further questions.

CROSS EXAMINATION

BY MR. LOUTHER:

Q. I have one or two, if you will bear with me.

I think you said your father died in December of 1956? A. Yes, sir.

Q. Now, then, the Defendant Milton Niport, do you recall talking with Dr. David Owens, the doctor of the St. Elizabeths Hospital staff?

A. Yes, I do.

Q. Do you recall telling Dr. Owens, sir, in your opinion your

brother had no mental illness? A. I did not, sir.

Q. You don't recall that? A. I remember the conversation clearly. Dr. Owens called me into his office and said that he couldn't
161 get anything out of Milton and he wanted just a more or less sketchy history from his childhood up.

Q. Do you recall telling him at that time there was nothing wrong with your brother? He gets that way every time he gets into trouble or words to that effect? A. No, sir, I did not.

MR. OWEN: Your Honor, I would like to object and ask this question and answer be stricken. It is always improper for a cross examiner to assume a fact which has not yet been placed in evidence.

Now, if the Dr. Owens, and if and when he assumes the stand, states that he did make such a statement, then, of course, it could be presented to the witness here. But until that time occurs, unless he wants to make an offer of proof that Dr. Owens is going to make such a statement, then I will withdraw my objection.

THE COURT: I will receive it subject to a motion to strike. I am sure it is made in good faith.

BY MR. LOUTHER:

Q. Now, Mr. Niport, this instance that you told His Honor and the Jury about involving your brother in the juvenile court when he was three or four years old, who hailed him into the juvenile court? A. A neighbor.

162 Q. Was it some neighbor that didn't like youngsters or something?

A. He was mischievous. She got fed up with him.

Q. What did he do? Did he walk on her lawn or something like that? A. I believe that was the actual complaint that she made but it was more than just that.

Q. Was she an elderly woman, if you recall? A. Not a very elderly woman.

Q. Now, then, she is the one that hailed him into court? A. Yes, sir.

Q. Now, then, is the woman psychiatrist that you spoke about, who examined the Defendant Milton Niport, I believe you said, you had thought she was from Maryland? A. I am almost certain she was a psychiatrist

from the Supreme Bench of Baltimore City.

Q. And you told the court and the jury that we, and I take it by that you mean the family, the family had tried to do everything that you could for the Defendant Niport during the time that you lived together?

Did you mean by that, sir, that your dad, when he was alive and your mother offered and afforded to this Defendant the necessities of life, food, shelter and clothing and spending money to put him to school and treat him like a good father and mother would treat a son? A. None
163 of us ever wanted for anything.

Q. Isn't it a fact, sir, that your brother, this Defendant here, was treated by your father and mother as a father and mother should treat a son? A. You mean as far as material things? Yes, sir.

Q. Now, then, there came a time, I think you said, your father was now deceased, I think you used the term that we gave him an opportunity to get into the business in Baltimore. I take it that is right? A. When I said we, I referred to the family.

Q. And there was a business conducted in Baltimore, was there not? A. Yes, sir.

Q. And this party that you spoke of while your father was in Boston awaiting an operation, was this party held in Boston? A. No, Baltimore. The family home there.

Q. Now, then, under the questioning of counsel for the Defendant, you have related, sir, some several instances wherein this Defendant has had prior difficulties with the law? A. Yes, sir.

Q. And one of them, I believe you mentioned, involved Lawrence, Massachusetts, is that correct? A. Yes, sir.

164 Q. And you said, what was the charge which he was found or pleaded guilty to up there? A. Armed robbery.

Q. Did that involve the use of a pistol? A. It involved the possession of a pistol.

Q. Carrying fire arms? A. If I may interject that the pistol was proved to be an antique relic, didn't even contain bullets.

Q. He had it with him, did he not? A. Yes, sir.

Q. Now, then, with respect to the spree that you described, that your brother Milton Niport was on, was it Brooklyn? A. That was one of the places.

Q. That was with a gang of boys, I think you said? A. It was with two or three others.

Q. He was not alone on that? A. Not on that one.

Q. And what was the charge that spree resulted in, please?

A. The same charge.

Q. Armed robbery? A. That is correct.

Q. Did that involve the use of a weapon, also? A. Yes, sir.

165 Q. What was the weapon? A. Pistol.

Q. And I think you mentioned, also, Miami, Florida, Mr. Niport, did you not? A. I did.

Q. What was the charge in Miami? A. Armed robbery.

Q. What arm did that involve? A. A pistol.

MR. LOUTHER: Indulge me one second, please, Your Honor.

THE COURT: Yes.

MR. LOUTHER: Thank you, sir.

THE COURT: Mr. Owen?

MR. OWEN: No further questions, Your Honor.

THE COURT: All right, sir, you are excused.

THE WITNESS: May I add something to help clarify this?

MR. OWEN: I wonder if I could consult with the witness for a moment, Your Honor?

THE COURT: I will permit you to do that.

(Consultation between attorney and witness.)

MR. OWEN: I believe we substantially covered everything, Your Honor. It would be just another crime that was recited.

166 THE COURT: All right.

Next witness, please.

MR. OWEN: The Defense rests, Your Honor.

MR. LOUTHER: Call Dr. David Owens, please.

DAVID J. OWENS

was called as a witness on behalf of the Plaintiff, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOUTHER:

Q. Dr. Owens, will you speak slowly and distinctly and loudly so everyone in the court room can hear you?

What is your name? A. David J. Owens.

Q. And your occupation? A. I am a physician, specializing in psychiatry.

Q. Your present location is at St. Elizabeths Hospital? A. That is right.

Q. And will you tell His Honor and the Jury -- briefly first of all, where did you take your undergraduate work? A. Citadel in Charleston, South Carolina.

Q. You got what degree in college? A. A.B.S. Degree in pre-medicine.

Q. Where did you take your medicine, Doctor? A. Medical College of South Carolina, in Charleston, South Carolina.

167 Q. Can you give us dates, first of all, when did you get your Bachelor of Science Degree? A. 1944.

Q. And when did you graduate from Medical School in South Carolina? A. June, '47.

Q. And after your graduation from medical school will you tell His Honor and the Jury what your practice has been? A. After completing medical college, I took one year at rotating internship at the Medical Center in Jersey City, New Jersey. At the completion of the internship I was in private practice for approximately three or four years.

Q. Where was that? A. South Carolina. Following that I served in the Army as a Captain in the Medical Corps in Korea and Japan for two years. At the completion of this tour of duty I was employed at St. Elizabeths Hospital and have been there since that time.

Q. When did you commence your employment at St. Elizabeths?
A. June, '55.

Q. You have been there and are now there since that time? A. Yes.

168 Q. Now, when did you first -- if you will please briefly tell us, when did you first start specializing in psychiatry? A. In June of 1955.

Q. When you got to St. Elizabeths? A. That is right.

Q. All right.

Now, then, during the course of your duty at St. Elizabeths this year, that is the year 1958, Doctor, have you had occasion, sir, to see and examine the Defendant Milton Niport who is seated over here at counsel table in the light gray suit and the horned rimmed glasses?

A. Yes.

Q. And you -- for that matter he was assigned to your supervision when he was admitted to St. Elizabeths under court order, was he not?

A. That is correct.

Q. Do you recall, Doctor, the date of his admission over there under court order? Was it February 24 or thereabouts of this year?

A. That is correct.

Q. Now, then, when the Defendant Niport was admitted to St. Elizabeths here in the District under court order, who, if you know, conducted the initial admission examination of this Defendant? A. I did.

169 Q. You did? And at that time did you conduct, Doctor, and did you perform a physical examination to determine whether or not it was anything physical, anything physically wrong with this Defendant? A. Yes.

Q. Anything wrong with him, did you find? A. Found nothing wrong.

Q. Now, then, from that point on, from the time he was admitted until he was returned to court, will you tell His Honor and the Jury -- first of all had you opportunity to converse with him, did you not or tried to? A. Yes, I did.

Q. And you had opportunity, Doctor, to see this Defendant Niport, his demeanor in the wards of the hospital, did you not? A. Yes, I did.

Q. You had occasion, sir, to talk with him, converse with ward attendants who had charge of the ward in which this Defendant was in, did you not, sir? A. Yes.

Q. Now, then, Doctor, will you tell His Honor and the Jury, was this defendant cooperative with you in your questioning of him during the examination? A. He was uncooperative.

170 Q. Will you tell His Honor and the Jury what you mean when you say he was uncooperative? A. Well, Mr. Niport from the beginning of his admission to St. Elizabeths was extremely uncooperative.

On admission examination it was approximately an hour and a half to get what information I did get from him concerning his present condition and his past history.

Mainly, this as such as in questioning, questions such as well, his background history, like his parents, if they were living, it was replies, I don't want to talk about it, and that is the way it went in general to most every question that was asked.

After spending considerable time and techniques and maneuvers to try to obtain this information, it would be revealed by Mr. Niport, it was not a condition that he didn't remember, it was a condition that he did not want to reveal the information because when he was questioned in other ways and after further questioning he would reveal the information that was requested of him.

It was more of a voluntary withholding of information rather than a absence or blank memory.

MR. OWEN: I wonder if I could interrupt at this time, Your Honor, to request permission to approach the bench?

THE COURT: Yes, sir.

(Bench Conference.)

171 MR. OWEN: Your Honor, Counsel for the Defense objects to the testimony of this psychiatrist based on any observation or interrogation prior to March 21, 1958.

This refers to the official file of the case, wherein we have a statement submitted to Your Honor or another Judge of this court over a signature of Dr. Winfred Overholser wherein he states: Your Honor may read and substantiate that. It was impossible to form any intelligent psychiatric opinion at this time. Here is the letter, right here.

THE COURT: All right, sir. What is your objection?

MR. OWEN: To anything that he says prior--

THE COURT: It would appear now that this Doctor, who, I believe, was working under the auspices of Dr. Overholser and on his behalf-- we must assume that.

MR. OWEN: But he states in the letter that as far as the St. Elizabeths Hospital is concerned that it was impossible to form an opinion as to the Defendant's condition--if Your Honor will glance at it.

THE COURT: I did.

MR. OWEN: On the grounds of that letter we would object to a psychiatrist coming in and saying they can now.

THE COURT: I don't think that follows. As to the March 21, 1958 date, he couldn't or didn't have sufficient information in which to formulate that opinion. That wouldn't be a bar at some future time to make use of it.

172 I will deny your objection at this time.

MR. OWEN: That letter, Your Honor--

THE COURT: I looked at the file myself, sir. I didn't find it.

MR. OWEN: As I understand there was a letter to this court. By way of information that even with the court signing the order and granting the Government their request they were still unable to form any intelligent psychiatric opinion.

THE COURT: You may be correct, but this file does not reflect that. If you have anything further you may bring it to the attention of the court.

MR. OWEN: I object to his testimony and I wish the record to so reflect.

(End of Bench Conference.)

BY MR. LOUTHER:

Q. Doctor, I think you left off at a point in telling His Honor and the Jury that the Defendant Niport, in your opinion, of his own will voluntarily was not cooperative by way of not being communicative with you? A. That is correct.

Q. Go ahead, sir, and tell His Honor and the Jury the rest of your observation. A. Well, there was no evidence of any abnormal mental contents such as delusions or illusory experiences either at the time he was admitted or during the period of his hospitalization.

And neither was there a history obtained from the patient of any abnormal malcontent at any time in the past.

173 Q. You say there was no history of any abnormal content, Doctor? Can you translate that into -- what does that mean? A. There was no evidence of illusory experiences of hearing voices. No evidence of delusion or ideation, that is, abnormal ideas, such as people following him or being persecuted.

No grandios ideas such as would indicate that a person may be suffering from some psychotic condition. There was no disturbance in his affect, that is, in his emotional response to the situation that was existing at the time.

Q. Now, Doctor, did you have occasion to sit in on the Staff Conference which was conducted with respect to this Defendant Niport, I believe, on March 18, 1958 at the hospital. A. Yes.

Q. And will you tell His Honor and the Jury what the attitude was of this Defendant when he was brought into the staff conference over there? A. Well, his case was presented to staff conference by me. That is the staff of physicians were present. I presented the case.

I read the history, what information I had obtained from the patient as a result of my examination, and so on.

At the end of this time, which is a routine procedure, the patient is asked to come into the conference. He appears and the doctors talk to him and ask him questions and so on.

174 We sent for Mr. Niport and the attendant came back and said he had refused to come to conference. So, I went myself, personally, to ask him to come to conference and he told me he wasn't coming. And I told him this was necessary, that it was necessary that he appear before conference so we could make a diagnosis and get him eventually discharged from the hospital.

He said that he was not coming. He wasn't coming, and I told him it was necessary for him to come, so he got up and said if I go I will not say a word while I am there and I said make an appearance.

He appeared in conference and after doctors, several doctors had asked him ten or fifteen minutes of what was his name, how old he was or any question he refused to answer even yes or no.

He didn't speak a word during the entire conference which was quite inconsistent with his previous behavior during his hospitalization in that he would occasionally talk with me after much questioning.

He was observed talking to other patients. He was seen by doctors on the administrative rounds, and on sick call at which time he would present his complaint or his questions.

He would come and ask permission to watch television. He was seen playing cards which was inconsistent with his behavior that was apparent at the time of the admission conference.

175 Q. Now, did you form an opinion, Doctor, as to whether or not Defendant Niport's refusal to answer questions when he was brought into staff conference on March 18, 1958, was a willing and understood refusal on his part or was it evidence of any psychosis or psychotic condition this muteness of his? A. I felt as well as I think the conference felt that this was voluntarily controlled because we knew that he was able to talk. He had just spoken to me coming to conference and he had some difficulties on the ward that morning prior to coming to conference in which he was able to talk and make requests and demands.

Q. When you use that terminology which you just did, Doctor, do you mean, in your opinion, that you believe that the Defendant just wasn't going to talk because he wasn't going to talk or what do you mean? A. That he just wasn't going to talk, that he could have but he refused to.

Q. Now, then, can you tell His Honor and the Jury during the period of time that this Defendant Niport was in the St. Elizabeths, did you, Doctor, find any evidence of any mental disease or mental defect in so far as this Defendant was concerned? A. I did not.

176 Q. Now, then, with that in mind, sir, will you tell His Honor and the Jury whether or not based on your examination of this man over

in St. Elizabeths, can you tell us, do you have an opinion as to whether or not on December 16, 1957, the day the Tsintolas Realty Company was held up, do you have an opinion as to whether or not on that day this Defendant Niport suffered from a mental disease or mental defect?

A. I think that would be extremely difficult to say with certainty. However, my feelings are that had a mental disease or defect been present at that time he would have shown some symptom or indication on February the 24th and subsequent to that.

Q. What you are saying if there was a disease or defect in existence on December 16, 1957, that in your opinion you would have found some evidence of it during the time he was in the hospital? A. That is correct.

THE COURT: Does that add up in your opinion that there was no disease or mental defect on December the 16, 1957?

THE WITNESS: That is my opinion, yes, sir.

By Mr. Lowther:

Q. Now, then, Doctor, may I ask you this, please, sir. Based on your medical studies and your specialization in psychiatry for the period of time that you told the Court and the Jury that you have so specialized, can you tell the Court and the Jury whether or not a masochistic neurosis is a term with which you are familiar? A. Would you
177 repeat that, please?

Q. Yes. Can you tell us whether or not there is such a thing as a masochistic neurosis? Is it a mental disease or a mental defect or is it listed in a text book as a neurosis? A. I am not familiar with the term according to the American Psychiatric Association Classification Manual.

Q. Is that manual --

THE COURT: Wait a minute, sir. You didn't let him finish.

THE WITNESS: I am not familiar with it according to the classification in the American Psychiatric Association Classification Manual. I am not familiar with any term as such as this.

By Mr. Lowther:

Q. You mean it isn't in the manual? A. Not to my knowledge.

I am not familiar with it. I have never heard of the term.

Q. Can you tell us this, Doctor? Are you familiar with the term neurosis? A. Yes.

Q. Can you say that as far as you know the term masochistic neurosis is not in the journal that you mentioned? A. That is correct.

Q. Now, can you tell us too, sir, based on your background as a physician and a psychiatrist, there is such a thing as a masochistic
178 trait, is there not? A. Yes.

Q. Does that -- what does that mean, Doctor? A. Well, the term itself means self-inflicted injury. That a person derives some pleasure sensation from harming himself.

Q. You mean cut himself or beat himself up? A. This would be other types of self-punishment.

Q. That is not considered a neurosis, is it, this trait? A. Well, it could possibly be one of the symptoms of a neurosis, but not itself. It would not mean that an individual was suffering from a neurosis. It would only be -- you would have to consider the entire personality along with this.

Q. Doctor, you recall, I believe, I spoke with you out in the corridor during the recess taken about an hour ago? A. Yes.

Q. And do you recall that I asked you questions as to whether or not you ever talked or with whom you talked, other than with the Defendant Niport? Do you recall that, Doctor? A. Yes.

Q. And who did you talk with, Doctor, other than the Defendant Niport during the time this Defendant was under your supervision in St. Elizabeths? A. You are speaking of his family?

179 Q. Yes, I am. A. His sister and his brother.

Q. Now, is that the Jerome Niport who is sitting in the first row of spectators or here on the lefthand side as you face them? A. Yes, sir.

Q. Now, then, will you tell His Honor and the Jury whether or not you had any conversation with Mr. Jerome Niport during the time this Defendant was under your supervision in St. Elizabeths, as to

Mr. Jerome Niport's opinion as to the presence of or lack of presence of mental illness on the part of his brother Milton Niport? A. Well, I had a lengthy interview with Mr. Niport, the brother of Milton Niport, and as I recall the general context of what was going on at the time in regards to the question about mental illness was that I had discussed the difficulty of getting information from the Defendant because he was uncooperative.

His brother stated this was the same type of behavior that he displayed when the lawyers first visited him in the jail and at any time in the past whenever he would have difficulty and things did not go his way. If his immediate demands were not met it would be that he would, so to speak, pout or would refuse to talk to anyone.

Q. Now, then, I want to show you, if I may, you have a copy of a
180 letter over the signature of Dr. Winefred Overholser, dated March 21, 1958, directed to the Clerk of this Court? A. I don't have it with me.

Q. Are you familiar with its contents? A. Vaguely.

Q. Well -- May I show him the court copy, Your Honor?

THE COURT: Yes. Mr. Owen has it.

By Mr. Louther:

Q. Now, this is the original of the letter. Doctor, would you take a moment and refresh your recollection with Your Honor's leave, please. Have you refreshed your memory? A. Yes, I have.

Q. The question I want to ask is this, sir. In part, this letter states, the closing part: As you will note we regret that Milton Niport's lack of cooperation makes it impossible for us to form a valid opinion as to his present mental condition or competency for trial and my question to you, sir, is that you have testified, as I understand your opinion, during the time this Defendant was over there he was mentally competent, is that correct? A. That is correct.

Q. Does this letter, sent over Dr. Overholser's signature, represent the conclusion or say the result of the staff conference because this Defendant Niport wouldn't open his mouth when he got in there?

181 What I am trying to find out, if you know, sir. What is the basis

for the statement in this letter that we regret that Milton Niport's lack of cooperation makes it impossible for us to form a valid opinion as to his present mental condition and competency for trial? A. Well, possibly, if I might explain about how this admission conference works and the result of the letter. The case was assigned to Mr. -- Mr. Niport's case was assigned to me for observation, and the case studied and presented at conference, as I mentioned earlier.

I would present the case at the admission conference. In other words, I was the Doctor, so to speak, assigned to this individual patient and was to follow him through while he was in the hospital.

Quite naturally I was more familiar with the details of his history, with his behavior because it was also my job, so to speak, to observe his behavior on the wards as other doctors would be assigned to other patients.

In addition it was my responsibility to interview relatives to obtain information from them concerning the patient's past history. In other words, the whole case was my responsibility and was to be presented at staff conference.

The other doctors on the service were familiar with all the patients as I was familiar with the other patients, but I was more -- especially a doctor is more familiar with the case that he is assigned than he is
182 with the patients that the other doctors have assigned to them.

As a result when admission conference takes place all the doctors are present but the doctor who has interviewed the patient a number of times, has obtained background history, is much more familiar with the patient than any of the other doctors present.

As a result of that the other doctors may have the patient -- he appears in conference and refuses to speak a word. They have difficulty in forming an opinion as to what his difficulty is because this is the most detail examination that they would have conducted of this individual.

However, I had conducted prior to admission conference over a period of three weeks several interviews both with the patient and observed his behavior and reached my own opinion.

However, at admission conference a letter is only -- the admission conference reaches a diagnosis when a majority of the conference is of this opinion and this particular admission conference, the majority that were there, they were not familiar enough with his case to obtain any information from him during conference and as a result could not reach an opinion and because of this the letter was written, because of his uncooperativeness were unable to obtain an opinion as to his condition.

183 MR. LOWTHER: No further questions.

THE COURT: Doctor, how long was he in the hospital under your supervision or whatever you call it?

THE WITNESS: He was admitted on February the 24 and discharged April the 3d. I think prior to admission conference he had been there approximately, I would say, twenty five days. Approximately a month.

THE COURT: But he was actually under your supervision from February 24 to April 3, sir?

THE WITNESS: Yes.

THE COURT: Mr. Owen?

CROSS EXAMINATION

BY MR. OWEN:

Q. Doctor, is there an S on the end of your name? A. Yes, sir.

Q. Now, you do know, do you not, Doctor, that Milton Niport the Defendant here, was sufficiently suspected of being mentally defective by the government or the government lawyers or the District Attorney of this jurisdiction? That the District Attorney thought it would be best to send him over to St. Elizabeths, as an expert in the field, to give an advisory opinion to this court?

MR. LOWTHER: Just a minute.

THE COURT: Let me see the file a minute, please.

Suppose you come to the bench.

184 (Bench Conference.)

MR. LOWTHER: I may inform the court I was advised by Mr. Titus, to whom this case was first assigned, that when he was advised

by Mr. William Owen that the Defendant had been examined by Dr. Miller, Mr. Titus moved that the Defendant be committed for competency to be determined.

He was anticipating the defense of unsoundness of mind. That is the reason for the motion. It was not because Harold Titus or the government or the U. S. District Attorney had any feeling that the man was of unsound mind, as I understand it.

THE COURT: What was the date, sir?

MR. LOWTHER: I don't recall the date, sir.

THE COURT: It doesn't show on here.

MR. OWEN: When I was first retained in this case --

THE COURT: When was that?

MR. OWEN: I don't remember the date. I conferred with him personally. This was a serious question in my mind as to the defense to be offered. I felt that he was mentally defective.

Now, he conferred with me and I was not -- it was not my opinion that he was sufficiently defective, unable to stand trial but I did not and do not believe that he was a criminal responsible for the felonious act that he committed.

185 Out of courtesy to the District Attorney's office, so there would be no chance of misunderstanding I called the District Attorney's Office, the District Attorney who would be handling the case and I spoke to Mr. Harold Titus by way of telephone.

I said I do not believe there is any legal compulsion to require me to enter a plea of not guilty by reason of insanity or to notify anyone of the anticipated nature of the defense, but only out of courtesy was I calling to suggest that that may well be the defense and I was going to get my mental opinion. I was going to get some expert views on it.

The Government then requested that this man be sent to St. Elizabeths to see whether or not he was mentally competent to stand trial.

In my opinion he was.

THE COURT: It doesn't say here.

MR. STEIN: The motion --

MR. OWEN: Well, the transcript is pretty clear. I clearly announced before the Judge that heard the motion that I had no request. Was making no request and Mr. Titus' -- the government type written order that was submitted --

THE COURT: All I am saying here is that it is frequently done when it is in the interest of the Defendant, and, of course, I do that myself repeatedly in the interest of saving time of counsel from coming back to court. There is no real significance to that really.

186 If I understand you correctly, Mr. Owen, when you say you advised Mr. Titus that you were going to have a defense --

MR. OWEN: That there was some question in my mind --

THE COURT: And subsequent thereto this request was made by the government? I don't think it makes any difference.

MR. OWEN: No, not this, but this Doctor would raise the implication that --

MR. LOWTHER: Mr. Titus thought the man was of sound mind, but he wanted confirmation.

THE COURT: You put him on notice and he was trying to verify the fact.

MR. OWEN: Yes.

THE COURT: Let's make it that way, then.

(End of Bench Conference.)

THE COURT: Ladies and Gentlemen, Counsel have stipulated that the question on the form -- that it should have been was to the effect that Mr. Titus had been put on notice by Mr. Owen, Counsel for the Defendant that he might, and correct me if I am in error, that he might raise the defense of insanity in the case and as a consequence and subsequent thereto Mr. Titus did request that a mental examination be had. Is that right, Mr. Owen?

MR. OWEN: I think it should be added, Your Honor, it was out of courtesy by Defense Counsel.

THE COURT: Yes. So the government would not be taken by surprise.

187 MR. LOWTHER: I stipulate, Your Honor. I think the Jury might be interested to know who Mr. Titus is.

THE COURT: I think we can stipulate that, Mr. Owen?

MR. OWEN: All right.

THE COURT: Mr. Titus happens to be the District Attorney who handled this case in the first instance and Mr. Owen told him that the Defense might be, he had not determined that it might be insanity and as a consequence then or sequence thereto Mr. Titus did cause, if I understand correctly, this examination to be made. Is that right, sir?

MR. OWEN: Yes, sir.

THE COURT: All right. Now, you will understand the question propounded to the Doctor in that light.

MR. OWEN: To rephrase it.

BY MR. OWEN:

Q. You understand that this man was sent over to you experts at St. Elizabeths, mental experts, with a request from the Government attorneys to determine his mental condition and capacity. Did you not know that? A. Yes, I knew that.

188 Q. And you also know, do you not --

MR. LOWTHER: I think that the court objected to the question propounded, Your Honor. The court record shows an order of the Judge of this court sending the Defendant over.

THE COURT: That is correct, Ladies and Gentlemen. The Defendant was sent as a result of the talk between Mr. Owen and Mr. Titus on a court order which happened to be signed by Judge Laws of this court.

MR. OWEN: The Judge of the court felt there was sufficient merit to require that this man be held up before trial long enough to have a mental inquisition at the hospital and so signed the order, as I understand it.

THE COURT: I stated to you that I have signed and, Mr. Owen, as you know rightly that he didn't think it was a frivolous request or he wouldn't certainly have done it.

If there was to be a defense of insanity in the case, the test came as quickly as possible whether the man be sane or insane. That is the true picture, isn't it?

MR. OWEN: Yes, Your Honor. Just exactly.

BY MR. OWEN:

Q. Now, did there come a time when this Niport fellow came over for you all to find out his mental condition? A. Yes. He was admitted to St. Elizabeths on February 24, 1958.

189 Q. What building was he brought to for you all to decide his mental condition upon order of this court? A. He was admitted, as all admissions to this service are routinely admitted, to the maximum security division.

Q. That is referred to as Howard Hall? A. Yes, it is.

Q. Now, did there come a time --

THE COURT: Excuse me, Mr. Owen. These Ladies and Gentlemen don't know what Howard Hall is. Doctor, Howard Hall is where people who are charged with a crime are sent, and this man had been charged and it automatically followed that he went there?

THE WITNESS: That is right, but not necessarily because of his behavior. Anybody who has criminal charges, any male who has criminal charges is routinely admitted to Howard Hall.

BY MR. OWEN:

Q. When you say maximum security, you mean big iron doors and bars, is that correct? A. I don't think -- probably one iron door probably in the building. There is a large wall around the building.

Q. Like around a castle and a guarded door, is that right?

A. There is an attendant at the door. He lets you in and out.

190 Q. And how many doors do you say you go through to confer with a client there or to get in where the patients are, sir? A. I don't know of but one iron door.

Q. How about steel doors? A. Well, they are on all of the windows. Steel bars on the windows, but the other doors are screened doors on the inside of the building.

Q. Now, after this man was sent over there for you all to find out his mental condition, or his mental competency, did there come a time when the court was notified that you could not come to a valid opinion as to his mental condition?

MR. LOWTHER: Just a minute.

THE COURT: You are asking whether he or whether the hospital consultation groups -- I think he has explained that.

MR. OWEN: I am asking, sir, whether or not he is aware that St. Elizabeths Mental Hospital which, of course, is a large organization notified this court over the technical signature of its superintendent, Dr. Overholser, that it was absolutely impossible to come to an intelligent or, I believe the word is, valid opinion as to his mental condition?

MR. LOWTHER: If the court please, again I will object to that question. This Doctor has explained the significance of that letter.

THE COURT: I will let you read the letter.

191 MR. OWEN: I am asking him for an explanation, whether he knows such a notification was sent back to this court.

THE COURT: I will take judicial notice of it and if you want to you may read it.

MR. OWEN: Yes, sir, I know that, Your Honor. I want to know whether he has personal knowledge of it.

THE WITNESS: I just read it a little bit ago.

BY MR. OWEN:

Q. You have personal knowledge of it, I mean, before a little bit ago? A. Yes.

Q. Did you have personal knowledge of it at or about the time it was sent on March 21, 1958? A. I had personal knowledge that a letter similar to this would be, but not the exact wording. I did not know what the exact wording would be. The admission conference on March 18, 1958, I was aware of what the decision was going to be and what the letter -- similar letter would be such as this.

Q. Did you notify your superiors or Dr. Winfred Overholser or anyone that you could arrive at a valid opinion? That you would arrive

at a valid opinion as an expert psychiatrist as to this man's mental condition and thereby help the court in the request that they made to St. Elizabeths? A. I notify Dr. Overholser?

MR. OWEN: Will you read the question to the witness, please?

192 THE COURT: Did Dr. Overholser know your opinion?

THE WITNESS: Dr. Overholser was not even at the admission conference, Your Honor.

MR. OWEN: I would like to have the question read to the witness as propounded.

THE COURT: Can't you restate it in the interest of time?

BY MR. OWEN:

Q. I would like to know whether or not you, at the time this letter came from St. Elizabeths, that you were all not able to arrive at an intelligent or valid conclusion?

Had you told any one of your superiors or Dr. Overholser or any of your associates that you, as an expert psychiatrist, could arrive at a valid or intelligent conclusion as to his mental condition? A. Certainly I expressed my views at admission conference, what my opinion was to the doctors who were present.

Q. You are sure that you told the other doctors at this conference that in your opinion this man was of sound mind and competent to stand trial, is that right? A. I am sure that I expressed my views, such as he was without mental disorder. I don't know the exact wording that I used at that time.

193 Q. So therefore, this letter from St. Elizabeths, stating that they were without ability to arrive at a conclusion as to his mental illness, was not your opinion at all?

You felt that they could arrive or that you could arrive at an opinion.

THE COURT: Would you mind, sir. You got two things there. He said that he could and did arrive at an opinion. He said that they did not and would not because the Defendant would not cooperate.

THE WITNESS: That is correct.

BY MR. OWEN:

Q. Now, were you asked at this conference whether or not you had an -- as an expert assigned to this case and in charge of this particular case, whether you had arrived at a valid opinion as to his competency? A. I am sure that I was asked my opinion as everyone in conference.

Q. Would you say it was disregarded.

MR. LOWTHER: Objected to.

THE COURT: I don't know what you mean by disregarded.

MR. OWEN: Well, apparently the letter came out that they could not arrive at a valid conclusion.

THE COURT: Do you want the letter in evidence?

MR. OWEN: Yes.

THE COURT: The letter will be in evidence.

194 You read it and I think you had as complete an explanation by the Doctor as he could possibly give you.

Do you want it marked right now, if you want to, you may.

MR. OWEN: Not right now.

BY MR. OWEN:

Q. Now, when were you first contacted by the Assistant District Attorney concerning this case and your possible testimony in this case?

A. I don't recall the exact date. I would estimate it about ten days or two weeks ago, probably. I was phoned and asked over the telephone that.

Q. Was it by Mr. Lowther or another Assistant District Attorney?

A. It was Mr. Lowther.

Q. And you had not spoken to any other Assistant District Attorney before that? A. To my knowledge I had not.

Q. Is the name Harold Titus familiar? A. I know the name, but I don't recall ever having spoken to him in regards to the case.

Q. Now, during that conference, did you tell him that you could sit on the witness stand in this trial as a mental expert and testify that you could give a valid opinion as to this man's mental condition both at

the time of the stay at St. Elizabeths and also at the time of the alleged
195 crime in December of last year? A. Well, this is not the way
the admission conference with doctors is handled. I am not your --

Q. That is not the question.

THE COURT: Excuse me. You stated that you received, I think
you said, a telephone call about ten days or two weeks ago asking you to
testify in this case. Is that correct, sir?

THE WITNESS: Yes, sir.

THE COURT: All right. Where do you go from there, Mr. Owen?

BY MR. OWEN:

Q. Now, I want to know whether or not in that conversation over
the telephone -- A. Oh, I thought you meant at the admission --

Q. -- conversation over the telephone with Mr. Lowther, whether
or not you told him that you could come into court and testify under oath
that you had arrived at a valid opinion and could testify that Mr. Niport
was mentally competent at the time of the St. Elizabeths stay and also
prior to that in December of last year? A. I think -- there are so
many questions involved in this one question. I talked with Mr. --

196 Q. What did he call you for? A. To ask me what my opinion
was in regard to Mr. Niport.

Q. And what opinion did you give him? A. I think he asked Dr.
Cody and Dr. Cody said I was more familiar with Mr. Niport's case
and --

Q. I am not asking what he said to Mr. Cody.

THE COURT: Now, understand. When he was talking to you what
your opinion was.

THE WITNESS: That he was without mental disorder.

THE COURT: You gave him that as your opinion.

THE WITNESS: That was my opinion not the hospital's opinion,
but this was my opinion.

BY MR. OWEN:

Q. Your personal opinion? A. Yes.

Q. As an agent of the hospital or as an individual mental expert?

THE COURT: I think we have to assume as a psychiatrist and doctor that that was the basis for your opinion, isn't that correct, Doctor?

THE WITNESS: Yes, sir, that is the basis.

BY MR. OWEN:

Q. And did he, the Assistant District Attorney, at that time suggest that he would like for you to so testify in the trial of this case?

197 A. He told me he was going to subpoena me, that I would have to, but not would I, but that I was going to be subpoenaed.

Q. Now, did he discuss with you at that time this letter that had already been sent over your signature or rather your superior's signature, that in fact you all could not arrive at a conclusion or a valid intelligent opinion? A. We didn't discuss the letter. I knew the letter had been sent.

Q. Did you suggest how you would correct the apparent inconsistency?

THE COURT: Now, Ladies and Gentlemen, you will ignore that.

In any event it would be for you to determine all issues of fact and testimony adduced, not what Counsel says, or what the Court has said or either counsel.

You are going to make those determinations yourself from the facts in the case.

MR. OWEN: May we approach the bench, Your Honor?

THE COURT: Yes, sir.

(Bench conference.)

MR. STEIN: Not to over lay this point, but I understand that the statute under which this man was committed for observation requires the superintendent of St. Elizabeths Hospital to inform the Clerk of this Court as to any action they have taken or any findings they have come
198 to and also at the same time it is my understanding that defense counsel had a right to see that letter, to formulate their defense.

Now, for the first time this afternoon they have presented in this court an oral opinion, inconsistent with the spokesman of the hospital

and I want to say a deliberate attempt, I think, and it at least raises the question in my mind as to the moral involved.

THE COURT: It comes as a surprise to the court. As a matter of fact, it is totally unnecessary for me to say anything of that sort. I knew nothing in the world that this letter was in the file.

I know they were diligent and Mr. Stein is diligent in the fact of the matters.

MR. STEIN: Well, this --

THE COURT: Will you let me finish?

The District Attorney's office had been put on notice that there would be a defense of possibly -- probably a defense of insanity or the government would have been very derelict if they had not ordered an examination to be made.

MR. STEIN: My point is this: That the defense was taken by surprise. They are saying now what was reflected in the letter was incorrect. That there was a -- the letter was filed in the case and was part of the record of this case.

Now, we understand that the conclusions reached in this letter were incorrect.

199 THE COURT: I don't agree with you. I think it is absolutely correct and is very clearly shown what the differences were.

MR. OWEN: Then we would ask leave to subpoena the author of this letter, Dr. Winfred Overholser, to find out how he happens to state that it was impossible to arrive at an opinion of his mental condition when one of his doctors did arrive at an opinion of his mental condition.

THE COURT: You have that right, sir. Would you like to?

But let's do this: Let's get on with this witness. This is another matter. It is now a quarter to five. I think we had better finish this witness.

MR. OWEN: What I would like to suggest, Your Honor, is that the author of this letter be made available without making it compulsory by the court.

MR. LOWTHER: I will certainly find out who the author of the letter was. I will go down tonight and then notify Mr. Owen.

THE COURT: Let's finish with this witness.

(End of Bench Conference.)

BY MR. OWEN:

Q. Now, Dr. Owens, I believe you said that you gave this man a physical examination when he first came in. Is that right? A. Yes, he was.

200 Q. But you had difficulty giving him a mental examination?

A. A complete mental examination, that is correct.

Q. Was he cooperative in the physical? A. Yes.

Q. But you say he was uncooperative in the mental examination?

A. That is correct.

Q. Would you say that there was a certain resistance there?

A. Well, he was uncooperative. If you call it resistance --

Q. Doctor, as a psychiatrist and having engaged in private practice, is it not true that in the average person suffering from emotional disorders, such as perhaps as some member of this jury--

THE COURT: I don't think we better charge this jury with suffering from any mental disorder, sir.

MR. OWEN: Well, mental illness, of course, has become something that it wasn't some years ago.

THE COURT: I don't know, sir.

BY MR. OWEN:

Q. Is there not, Doctor, a certain resistance within a person to--
a normal resistance to resist psychotherapy or an psychiatric investi-
201 gation? A. Well, a majority of individuals, who seek psychiatric help, seek it voluntarily.

Now, after a person has begun treatment there is a resistance to revealing individual facets of his life's history, past history, but the actual going to the psychiatrist -- most people go to a psychiatrist to talk about their problems.

Q. And you deny as an expert in the field that there is any well recognized situation whereby it is known that emotionally disturbed people continue to resist curing their emotional disorder, continue to

put it off, continue to postpone? A. No, I am not saying that at all.

Q. You do know that there is such a well understood principle either under Freud or more modern concepts, do you not? A. By the fact that people are committed to mental hospitals by courts is indicative they are not volunteering to go.

THE COURT: Some are and some are not?

THE WITNESS: Yes. Both ways.

BY MR. OWEN:

Q. So, often you meet resistance, do you not? A. You do.

Q. Often it is normal for a psychiatrist to run into a situation where he meets resistance to treat, is that right? A. That is right.

Q. Now, I believe you said that you didn't know what a masochistic neurosis --

MR. LOUTHER: That was not the Doctor's answer at all.

BY MR. OWEN:

Q. Well, let me ask the Doctor. Do you know what a masochistic neurosis-- A. Well, quite frankly I have never heard the two terms used together. Now, there are neurotic individuals who have a masochistic trend or traits, but according to the American Psychiatric Association Classification Manual there are six different types of psychoneurosis, and a masochistic type is not listed.

Q. Have you ever heard of a neurotic person with an exaggerated masochistic tendency? A. I have heard of a neurotic. Neurotic persons with a masochistic tendency, psychotic persons with the personality disorders with it and so-called normal persons that have certain traits.

Q. So you fully understand what is meant if a person tells you that they are suffering from a masochistic type of neurosis? A. No.

Q. Would you understand what they meant if they said a neurosis with a masochistic trait? A. I would think that they had a neurotic condition and a person who was -- well, with masochistic symptoms.

Q. Now, what is masochism? What does masochistic mean? A. Well, as I explained briefly a short while ago it is an individual who derives some type of pleasure from inflicting self-punishment or punishing himself, either. Emotional, punished by physical cruelty or

by some way punishing himself.

Q. For instance, Doctor, getting himself in jail would be one way, wouldn't it? A. Well, it could.

Q. For instance getting himself held up to ridicule, would that be one way? A. It is possible.

Q. Is it not possible for a person to develop masochistic traits and to punish himself and to get himself in trouble in order to get a pleasure because by that it hurts someone else? A. Would you repeat the question, I didn't exactly follow it.

Q. Is it not possible for a neurotic personality to develop masochistic traits because by so hurting himself he hurts another or
203-A others? A. Then that would not be masochism. It is hurting someone else. The definition itself is self-punishment, not punishing someone else. That would be sadistic or sadism.

Q. All right. Suppose he gets a pleasure out of hurting someone else? A. Then this is some form of sadism.

Q. And suppose that the only way he finds he can hurt other persons by in fact hurting himself, holding himself up to ridicule-- A. Then this would be both sadism and masochism which frequently go hand in hand.

Q. That would be a neurosis with overtones of both masochism and sadism, is that right? A. I don't know, but if you can't diagnose an individual from one symptom--

Q. Well, let me give you a hypothetical case, or let me ask you first how many symptoms did it take for you to diagnosis this case?

A. Well, I didn't see any symptoms present and that is the reason I diagnosed it without mental disorder. I arrived at my opinion without mental disorder.

Q. But so far as you know and deep inside his emotional structure he could be very ill, could he not? A. In my opinion he was not.

Q. Now, was he on your ward all of the time he was over at St.
204 Elizabeths? A. Well, wards are not assigned to doctors. Specific doctors do not have specific wards assigned to them.

Q. Was he in any other ward besides Howard Hall at St. Elizabeths?

A. No, he was in Howard Hall the entire time he was there.

THE COURT: Excuse me. Was he your patient throughout that time, assigned to you?

THE WITNESS: Yes, he was assigned to me for observation and study. Other doctors saw him too, but principally I was the one responsible for this individual.

BY MR. OWEN:

Q. Now, you say that originally he was cooperative in this physical examination?

THE COURT: Don't let's repeat, please.

BY MR. OWEN:

Q. Do you know -- and then you say later he was uncooperative? Do you know whether anyone did anything --

THE COURT: Now, Mr. Owen's, excuse me a minute. You are making that sort of double barreled.

Now, Doctor, and correct me if I am wrong, because I think the jury should understand this. You say that he was cooperative in the physical examination but was uncooperative at the time of the consultation in so far as the mental examination was concerned?

205 THE WITNESS: That is correct.

BY MR. OWEN:

Q. Now, do you know if anyone mistreated him in any way or disturbed him mentally in any way in the interim period to cause him to become so exaggeratedly resistive or recalcitrant? A. I recall some report that he either -- one of the doctors had been called or someone had stopped by or he had complained that he was being punished. I am thinking now, to the best I can remember it was a lawyer that had called and said he had been punished, which was entirely incorrect.

At the time he was -- I recall that the other patients on the ward had requested that he be moved because he was demanding and instructing them how they were to do and I think the report mentioned that he was arrogant and belligerent and the other patients had come in and requested that he be moved off that ward because he couldn't get along with them.

Q. Now, the inability to adjust, such as you described, that would indicate a maladjustment emotionally? A. Well, it could but it--

Q. That institutional difficulties such as you are describing, doesn't that in and of itself indicate some sort of emotional disturbance, isn't that the first thing that a doctor looks to over at St. Elizabeths?

206 A. I don't know that this is the first thing. At least this is part of his total picture and it may be indicative and further evidence of some mental illness but it in itself does not mean that a person is mentally ill because he demands his immediate needs, that they be immediately satisfied.

Q. Is it not a fact, sir, that he was transferred to a ward of extremely disturbed or a section of extremely disturbed mental patients, and all of his liberties taken away from him? A. He was transferred down to Howard Hall 4 which is a ward which is certainly not the most disturbed, but --

Q. What ward had he been on before? A. He had been on ward five.

Q. What type of ward is Howard Hall? A. It is the admission ward where all new admissions are admitted to that ward and usually remain there for several weeks until a vacancy occurs and we can decide where they would adjust, what ward this individual would adjust best to and then they are transferred from that ward.

Q. And the worst ones are transferred down to ward 4? That is the ward you say--

THE COURT: Excuse me. He said it was not the worst ward.

BY MR. OWEN:

207 Q. Is it next to the worst? A. Well, we don't have them graded worse, bad and not so bad and medium.

Q. Well, let's say disturbed and less disturbed and privileged and less privileged? A. Well, ward five is the admission ward. Six and seven are the privileged wards. Ward eight is, well, some real -- it depends on the individual. Ward four is the same way. Ward one is a very disturbed ward.

Q. Now, was this man transferred to a ward where the patients are not very disturbed? A. Some of them are disturbed on ward four. Some are not. As it frequently happens on the privileged wards an individual who is disturbed but it is also an individual that is adjusting satisfactorily that he gets along and is permitted to remain on these privileged wards.

Q. Doctor, if you had a patient come in over there and decided that he is not mentally ill as you say you did in this case, wouldn't you put him on a ward where they were the less mentally ill as the normal routine? A. Well, you see when a patient is admitted we don't make a decision right then what is going to happen to them. He is admitted and observed and usually remains on the admission ward for several weeks or several months until we make this decision.

A person can be difficult to get along with and not mentally ill.

208 And if an individual who is such as we are speaking of is demanding and arrogant to such an extent, not getting along with other patients and they make a request that he be removed we don't send him to the privileged ward then.

Q. Now, then, how do you explain his demanding and arrogance that you seemed to have repeated here several times as a psychiatrist? How do you explain that? A. Well, I think this is a pattern that has gone on throughout his life. This is not something that just started when he was admitted to St. Elizabeths. The history so indicated that this has been the pattern that has developed and progressed throughout the patient's life, even in childhood.

Q. And would you say that it is normal or abnormal? A. I don't know. I think you would have to give me what you mean by normal and abnormal.

Q. Well, I think you are better qualified, Doctor, to tell me what normal and abnormal means. A. I feel that we both have maybe different opinions about this. So I will know, when I answer your question, if possible, if you can define what you mean by normal then I can answer it according to those terms.

Q. Wouldn't such a manifestation be an indication of a neurotic emotional structure? A. They could be, but not because these traits are present. It doesn't mean everybody that has this trait is a neurotic individual.

209 Q. Well, what did you find in this man to counteract these facts that indicate that he could be emotionally disturbed?

THE COURT: I think he stated that he found no symptoms of anything abnormal and therefore concluded he was of sound mind. Is that correct, sir?

THE WITNESS: Yes, sir. That is correct.

BY MR. OWENS:

Q. Now, there was no affirmative conduct that indicated to you or a negative view that he was emotionally ill, is that correct? A. That is--

MR. LOUTHER: Just a minute, if the Court please. I must confess I am going to object to that because I don't understand affirmative negative conduct. I can't quite get that.

MR. OWEN: Well, I believe this Doctor has--

THE COURT: Suppose you reframe the question, sir.

BY MR. OWEN:

Q. Let me clear it up this way.

I believe that you mentioned that you saw him playing cards with other patients at this mental hospital? A. Yes.

Q. Now, did you see him doing anything else? A. I saw him in discussion with other patients, talking to them.

210 Q. Did you overhear the conversation? A. No, I did not.

Q. You wouldn't know whether they were planning to overthrow the Government or whether they were talking about the weather, would you?

THE COURT: If he didn't hear them he certainly wouldn't.

BY MR. OWEN:

Q. Now, do mentally unstable persons at the hospital there, persons you do think are emotionally ill play cards? A. Yes, they do.

Q. So seeing him play cards doesn't necessarily mean that he is without emotional illnesses, does it? A. I didn't have reference to that.

That was one of the things that he could be cooperative and told, if he so desired, which was an indication to me this was a voluntary thing on his part, not something that he was controlled by mentally, but it was something he did not want to talk about. He wouldn't talk about it.

Q. Now, I believe you said that this grown man pouted. Is that the word you used? A. I didn't say that.

Q. Well, that is my notes. A. I said his brother gave me this information.

211 Q. I thought you said that he refused to talk and pouted?

THE COURT: His brother so stated to him and he recited it here.

THE WITNESS: In my conversation, I think it was in regards whether the brother felt he was mentally ill or not that I had discussed his present situation with his brother when he was at the hospital and he stated that this was the usual type of behavior that he usually displayed whenever it did not go his way, his demands were not met and whatever he wanted and he didn't get it, he would get mad and pout.

Q. Now, there -- was there anything from the background or details that his brother told you at the hospital which led you to this conclusion that he was not emotionally disturbed? A. Well, the information received from his brother as well as all the other information, the observation and study and this examination that we made, all of it goes into arriving at an opinion and I am sure the brother's information, as well as the information that we had from the Army as well as information from his sister and from our own studies and observations this all goes into my arriving at my opinion.

Q. You knew that he had psychiatric treatment in the past, did you not, Doctor? A. I think his brother reported that to me that he had been examined by a psychiatrist in his early teens or somewhere along there.

212 Q. And you did understand that the conclusion of that particular expert, at that time, was that he was emotionally ill or mentally sick, did you not?

MR. LOUTHER: There is no such evidence in the case.

THE COURT: I will let him answer. Did you have any such information?

THE WITNESS: No.

BY MR. OWEN:

Q. What did the brother tell you about this psychiatrist who examined your patient? A. Well, as well as I recall what he said about Mr. Niport was that he had been seen by a psychiatrist in his early teens or ten or twelve or fourteen years of age, something on that order, and the psychiatrist told them something like there was not much they could do for him but he would get worse.

Q. But you didn't think he was very bad off when you saw him?

THE COURT: You said in your opinion he was of sound mind, sir?

THE WITNESS: Yes, sir.

BY MR. OWEN:

Q. Now, Doctor, do you think you could have come to a better opinion if this man had cooperated with you and had been completely frank with you and liberal in every way? A. Well, I don't know whether I could have come to a better opinion. I feel it would have been easier
213 to arrive at my opinion had he been more cooperative and to be perfectly honest shall we say that--

Q. You would be more sure?

THE COURT: Let him finish, please.

THE WITNESS: There would have been a lesser degree of possibility of error.

BY MR. OWEN:

Q. Suppose I were to tell you that a psychiatrist with say twice as much experience in the field as you have--

THE COURT: I will sustain the objection to that.

Ladies and Gentlemen, you do your own multiplying and adding not Mr. Owen's please. You remember the evidence in the case.

BY MR. OWEN:

Q. Suppose I were to tell you, sir, that another psychiatrist had been able to get him to cooperate as you could not, and had complete exploration to his own satisfaction and came to a different conclusion than what you say you came to, would that or does that have any effect whatsoever on your opinion based on no affirmative facts--

MR. LOUTHER: Just a minute, if the Court please.

BY MR. OWEN:

Q. -- or based on whatever your opinion is based on? Let me put this that way. Does that effect your opinion? A. No, I don't think
214 that it would because at admission conference there were several doctors there who were unable to express an opinion and I don't think the fact that someone else found him mentally ill or someone else found him not mentally ill, it is not going to influence my opinion because I arrived at my opinion on the basis of my examination and study and understanding of Mr. Niport, not what somebody else told me.

Q. Yes.

Do not doctors specializing in psychiatry use the process of consultation, say, on the old principle that two heads are better than one or two doctors views are better than one? A. Well, I think that--quite often we have consultations.

Q. Don't you think that is valuable in assisting you or any psychiatrist to arrive at a definite conclusion as to mental illness? A. I think it is helpful, yes.

Q. Now, did you take any notes at all in regard to what you saw or didn't see Mr. Niport do? A. I don't follow what you mean about notes.

Q. You tell me that you observed him and as an expert you came to the conclusion that there wasn't a thing wrong with his mind so far as mental illness is concerned, isn't that what you said? A. That is not
215 exactly what I said.

Q. You said he was not emotionally ill. A. Without mental disorder.

Q. Now, did you take any notes of any of these factors or instances that caused you to come to that conclusion, Doctor? A. You mean mental or written or what?

Q. Written? A. Well, certainly like the day he was admitted I took all types of notes and these notes are subsequently dictated into a dictaphone and transcribed by a secretary and placed in the patient's chart, in his hospital record. So notes are taken and notes are also kept

by ward personnel and nurses and attendants on the ward.

Q. When is it that you first came to the conclusion that this man was without emotional illness? A. Well, actually this is not something that you see and come to the decision at 2:00 p.m. on February the 28th. You arrive at this decision as to whether a person is mentally ill and what type of mental illness he may have or if he is without mental disorder over a period of observing and studying the individual and it is not something you suddenly arrive at.

It is something that comes about over a period of hours and days and weeks after study and then you arrive at your opinion and I am not actually sure of the exact date that I did arrive at this opinion.

216 Q. Are you sure that you did arrive at this definite expert opinion prior to the writing of the letter from St. Elizabeths? A. Well, it is nearly always necessary that prior to the admission conference which occurred on this particular case on March 18, 1958, that the Doctor who is presenting the case usually has arrived at an opinion.

Q. No. I am asking you if you had arrived at this definite opinion?

THE COURT: He said he had as of the 18th.

BY MR. OWEN:

Q. Now, had you arrived at it by the time that the conference you claim was held at St. Elizabeths?

THE COURT: That is what he stated.

MR. OWEN: Then he didn't answer my question. I would like to ask it again.

THE COURT: I don't think you listen, sir. He said it is definitely the practice that the doctor who is charged with the responsibility of the case formulate their opinion prior to being presented at a mental conference. Is that right, Doctor?

THE WITNESS: Usually that is the case.

THE COURT: And the fact is, if I understood you correctly, as of the 18th, the date of the conference in this case, you had formulated
217 an opinion?

THE WITNESS: That is right.

MR. OWEN: Well, my question was whether or not he had formulated an opinion prior to the time the letter was written.

THE COURT: I think that is a mathematical certainty, the letter being dated March 21. He stated he formulated an opinion on March the 18th.

BY MR. OWEN:

Q. Did you make any notes in the jacket of this man's case at St. Elizabeths that you as his doctor, he was assigned to you, had come to the conclusion that he was not emotionally ill or was without any mental disorder? A. I would think this is not the routine procedure.

Q. I am not asking you that. A. I did not take -- a hospital procedure which is not routinely done.

Q. Do you not maintain reports and progress and so forth of your patients and submit those to your superiors and keep them in your clients file? A. There are two different records on the patient. One is a nursing report where these notes are kept by nurses and attendants. The doctors take all of these notes, either written, verbally taken down in their own handwriting or given notes by other doctors or say a note will be left on your desk that something happened to the patient.

218 You also make mental notes. All of this then is consolidated together and is dictated a week or several days prior to the patient going to this admission conference and then this dictation is typewritten and it is all put into the individuals record then.

The scratch notes and scratch pads are not incorporated into it.

Q. Now, did you bring those records with you today? A. The hospital records?

Q. The records on this client -- this patient, excuse me. A. They had not been subpoenaed and actually the written notes of my hand notes are scratch notes and would not be in the record.

Q. Now, where would your hand notes be? A. Well the essential parts of them are dictated and transcribed and put in the patient's record. But we don't keep all of these scratch notes and all the notes. We wouldn't have facilities for them.

Q. You discard them or save them? A. Discard and most of the notes are mental to start with.

Q. Now, who did you -- first of all did you state this conclusion in this written report which you formulated prior to the conference? Did you state the conclusion that your patient had been assigned to you, 219 was without any mental disorder in the written report which you say is boiled down from all the pencil notes and observations? Is it in the written report? Is it in the written report which you prepared in this patient's case? A. I don't think in the dictation that I did there is actually a form that you go by in dictating the case study. There is not a place for this particularly in--

Q. For your opinion whether he is sick or well? A. In the summary you have a -- or usually you put what -- well, in the admission conference the summations are summed up of what the doctors thinking is and it is all summed up -- in this particular case it was not as yet determined, the mental condition.

Q. Now, then, you do know whether you put in writing your opinion of this man's mental condition, is that right? A. I doubt if it is in my own dictation, that it is written there what my opinion is that he was without mental disorder because this would come up for discussion at conference.

Q. Yes. Now, did you tell anyone that in your opinion he was without mental disorder?

THE COURT: That question was asked several times and he answered to the best of his ability, haven't you, Doctor?

THE WITNESS: I have answered, yes.

220 BY MR. OWEN:

Q. Maybe you could help us by giving us the names of the doctors who were at the conference. A. The conference of March 18, 1958, Doctors Tortalena, Cushard, Cody, Owens, Platken, Reed and Dickinson from the Psychology Department.

Q. Do I discern that you are reading from a piece of paper? A. Yes.

Q. May I see that, please? A. Sure.

Q. Can you tell us what this is? A. What what is?

MR. LOUTHER: That could be marked as an exhibit, Your Honor, if it is going to be questioned.

MR. OWEN: We will mark it as Defendant's Exhibit No. 1.

THE COURT: All right, sir.

MR. LOUTHER: May I see it?

THE COURT: Suppose you both read it together, it may save some time.

MR. LOUTHER: No objection to its admission in evidence, Your Honor.

THE COURT: All right, sir.

221 (Defendant's Exhibit No. 1 was marked for identification.)

MR. LOUTHER: With Your Honor's indulgence, may I step from the well of the court room for a second, please?

THE COURT: Yes, sir.

BY MR. OWEN:

Q. What is Dr. Tortalena's first name? A. Francis.

Q. What is Dr. Cushard's first name? A. William.

Q. Dr. Cody's? A. William.

Q. Dr. Reed? A. James.

THE COURT: Do you want to offer it, Mr. Owen?

MR. OWEN: Yes, sir, we will offer it in evidence.

THE COURT: All right. It will be received, there being no objection.

(Defendant's Exhibit No. 1 was received in evidence.)

THE COURT: How much longer are you going to be, sir?

MR. OWEN: Probably beyond 5:30, Your Honor.

THE COURT: About five minutes, you say?

MR. OWEN: Yes, Your Honor.

BY MR. OWEN:

222 Q. Do I understand that this is a copy of some official record of St. Elizabeths Hospital? A. No, these are -- when I knew I was

going to have to testify in court and yesterday afternoon prior to coming I made these brief notes for my own use when I came down here to refresh my memory, such as the date of admission and some events and some as you see here details that I may not have been able to recall. This is nothing official, hospital records. It is only made by me for my own use.

Q. Where did you get the information from? A. From his hospital record.

Q. But you did not bring that record with you?

THE COURT: Don't let's ask that. I think he already answered that question.

BY MR. OWEN:

Q. Now, I see here, Doctor, where it says diagnosis, and you have not yet diagnosed. Do you know on what date that entry was made?

A. No, this is copied from the hospital records. All of this like date of admission was taken on February 24, 1958. That was taken from the hospital records.

The diagnosis was what the hospital records shows and is not yet diagnosed. The date of discharge. This is all copied from the hospital records.

Q. I am asking you on what date the hospital records were entered saying not yet diagnosed? A. On the date of admission conference
223 which would be March 18, 1958, that was when they made the diagnosis, not yet diagnosed.

MR. OWEN: I believe that concludes our cross examination, Your Honor.

MR. LOUTHER: No redirect, Your Honor.

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232-233

WINFRED OVERHOLSER

was called as a witness on behalf of the defendant, being duly sworn, testified as follows:

234

DIRECT EXAMINATION

BY MR. OWEN:

Q. For the purpose of the record, Doctor, would you give us your name? A. My name is Winfred -W-I-N-F-R-E-D, Overholser.

Q. And also for the purpose of the record will you tell us your official position with the Federal Government? A. I am a Superintendent of St. Elizabeths Hospital.

Q. And how long have you so been a superintendent? A. Almost twenty one years.

Q. Dr. Overholser, we are sorry to bother you from your usual busy day but --

MR. COURT: Mr. Owen, let me suggest, don't make any side remarks. The doctor has been called by virtue of a subpoena and he is here like the other witnesses. Let's save as much time as we can.

BY MR. OWEN:

Q. There appears in the official court file of this case, Dr. Overholser, the U. S. versus Milton Niport, Criminal No. 31-58, a letter from you directed to the Clerk of this Court which was received by the clerk of this court, Harry M. Hull on March the 22nd and was filed in the record of this criminal proceeding on the same day. I would like to ask you to glance over that letter, sir.

235 THE COURT: Are you satisfied, Doctor?

THE WITNESS: Yes, sir.

THE COURT: He is ready, Mr. Owen.

BY MR. OWEN:

Q. Now, my question, Doctor, is do you know anything about that letter which appears over your signature? A. I signed it. I did not dictate it. It was prepared for me by the service on which Mr. Niport was a patient, as a result of conference that they had.

Q. Now, did you read it? A. At the time?

Q. Yes, sir. A. Yes. And I read it now.

Q. At the time you signed it? A. Yes.

Q. Now, what did you understand, Doctor, by the portion of the letter which you signed stating that lack of cooperation makes it impossible for us to form a valid opinion as to his present mental condition? What did you mean by that phrase? A. I think that is fairly clear English, I hope so.

He had been observed as I remember hearing about it at the time. He had declined to converse with the doctors or the psychologist who attempted to interview him. There was nothing about his declining to talk which indicated that he was mentally ill.

236 There are some patients, of course, who do not talk when they are mentally ill, but they show other symptoms, too. But he appeared to be in fairly good contact. Knew what was going on and when he was asked to do things he would do them. He evidently understood what was said to him.

Q. Were you present at the conference, Doctor? A. No, I was not.

Q. Have you ever observed this patient or seen him? A. I don't know if I have ever seen him. I may have in my rounds through the hall, but I don't --

Q. Then, you are reciting facts only that you recall had been recited to you by others? A. Yes, sir, that is right.

Q. Now, if you, Doctor, as an eminent psychiatrist and I am sure qualified to so testify in this court --

MR. LOWTHER: So stipulated.

BY MR. OWEN:

Q. Would you say that a conclusion could have been reached as to his mental competency contrary to your letter? A. I think not. That is why we said valid. There might have been an impression but certainly communication with the patient is almost essential in making a diagnosis.

Q. Now, under modern psychiatric theory, based on Freudian

237 principle, what do you mean by communication? A. There are various kinds of communication besides words.

The most common type of communication, of course, is by words in a language which the hearer is familiar.

There are, of course, many other types of communication, facial expression, intonation of the voice, hesitation, shrug of the shoulder and so on.

I suppose that there may be a language of those things. But they are not very satisfactory in finding out what is in a patient's mind.

Q. Is it why you suggest that a valid conclusion could not be arrived at without such oral language communication with the client, between the patient and client? A. Yes, that is what we mean to convey.

Q. Let me ask you, Doctor, to glance at these records and see if they are any way familiar to you by form or otherwise. A. I believe these are forms that we use.

Q. You have seen them? You have seen similar forms used at the hospital? A. Yes, I recognize one or two signatures.

Q. What are they called, described? A. These are the doctors progress notes, the blue ones.

238 Q. Now, the second sheet is a blue one, Doctor, and could you tell me which doctors progress notes that would be on your staff? A. That would be Dr. Owens. His signature is at the bottom.

Q. Now, what would you understand as a psychiatrist --

MR. LOWTHER: May we approach the bench?

THE COURT: Yes, sir.

(Bench Conference.)

MR. LOWTHER: The paper that Mr. Owen has in his hand is dated, I believe, February 24, 1958, and at the bottom -- may I see it, please, a second?

At the bottom over the signature of Dr. Owens, I assume it is his handwriting. I don't think it is proper to cross examine this witness on his understanding of what Dr. Owens put down here. That is the reason I asked to come to the bench.

THE COURT: What is your answer, Mr. Owen? What does this mean?

MR. OWEN: He is the expert on the stand. I would like to ask him what schizophrenia means.

THE COURT: I will let him ask.

(End of bench conference.)

BY MR. OWEN:

Q. Dr. Overholser, do you happen to recall offhand how long Dr.
239 Owens has been on your staff and a member of your staff?

A. Well, he came to us either two or three years ago as a resident and only recently I put him on regular staff position.

Q. About how recently, would you say that you promoted him to staff status? A. At the completion of his residency. I think that would be within the last few weeks. He has been doing that work right along. He is one of our very valuable people.

Q. Then at the time of this report or his investigation of the patient Niport he was not in the position of a staff psychiatrist? A. If one makes that distinction, he was there as a resident rather than as a member of the permanent staff.

THE COURT: Was he a doctor and a psychiatrist?

THE WITNESS: Yes, indeed.

BY MR. OWEN:

Q. Do you know, Dr. Overholser, whether or not he has passed his psychiatric Board? A. I don't believe he has. One has to have three years of residency plus two years of experience before being eligible.

Q. To qualify for the American Psychiatric Board? A. Yes. The American Board of Psychiatry and Neurology, he wouldn't be eligible for that.

240 Q. Are you a member, sir? A. Yes, I am a diplomat.

Q. Now, I see here that Dr. Owens in this report, I believe you described as a doctors progress notes, on the blue page, well, could you read for us his conclusion or impression there and tell us in psychiatric language, and if you could explain for us what those technical terms mean under the American Psychiatric definition? A. The statement is

very little information obtainable because of the patients refusal to cooperate. Physical, essentially negative. I. M. P. which stands for impression; schizophrenic paranoid.

Q. Now, could you describe what Dr. Owens meant that his impression was of this patient in lay terms, defining the psychiatric words?

THE COURT: What date is that?

THE WITNESS: I was about to say that the date is February 24, the day that Mr. Niport was admitted. With very little information available from outside sources and this was, of course, an impression, first impression by the doctor who interviewed him on admission.

BY MR. OWEN:

Q. When you say a doctors impression, does that mean his opinion, personal opinion? A. I should say that impression means a somewhat more casual word than opinion. Opinion implies a considerable
241 amount of information available to form an opinion or judgment. One may have an impression which we wouldn't dignify by calling it an opinion.

Q. Would a doctor have any impression at all if he had no foundation for it or no factual substantiation? A. That perhaps depends on the doctor in part. But, yes, I think we all get impressions in talking with people, sometimes even before we have talked with them. We may dislike their appearance. We say here is a person who is rather suspicious in attitude or who is rather sullen, gloomy and so on. One gets impressions of a lot of people which he would hate to express as an opinion.

Q. Is there not always a cause for a persons impression? A. Yes, it is usually an emotional one. Very often an emotional one depends on the individual. Two persons might get different impressions of the same individual they are talking with because the observer might be of a different sort of make up.

Q. Can you tell us in lay terms what Dr. Owens' impression or view was as described there? A. Schizophrenia is one of the very common forms of mental disorder. There are several types of it. He thought that this was a paranoid type. Schizophrenia is characterized

242 usually by a certain amount of withdrawal from reality along different lines. In some types of patients, so to speak, he crawls into his shell, cuts off his contacts with his environment, with his life.

There is a form indeed in which the patient is so extreme on that he may go into what appears to be a stupor. He may not move not only when he is asked but even if an attempt to move him, he may resist. In a paranoid type, however, the prevailing emotional tone is one really of suspicion, ideas that people are after him, that he is being put upon by the world. There may be a good bit of grandiosity. That is a feeling that he amounts to a good deal more than he really does. Some of the extreme cases of patients are quite sure for example, that they have a number of millions of dollars. In fact I know one patient that we have indeed that comes up and offers to give me a billion, but I thank him and let it go at that.

That is the general paranoid, means in general suspiciousness and very frequently the feeling of grandiosity.

But the schizophrenia part indicates a certain amount of pulling away from reality. It is a defense against a situation, sometimes a series of situations in which pulling away from reality in order to protect the individual. Schizophrenia is, as I say, one of the most common types of mental disorders in hospitals at least, because a good many of
243 the patients suffering from it do not respond fully to treatment.

Q. Would you say, Doctor, that it is an impairment of the intellect? A. No, as a rule not. Again the difficulty seems to be largely emotional in basis. No, some of our paranoid schizophrenia patients are what you call brilliant, it may not be an impairment of the native ability to reason with, let's put it that way.

Q. However, it is often a form of neurotic emotional disturbance? A. Not neurotic. It is psychotic. As a matter of fact, that is a distinction, but it basically is emotional in origin.

Q. Then we can have psychotic disturbances of the emotional part of the mind? A. Emotional, yes. Emotional origin.

Q. Now, let me show you, Doctor, another group of papers here

and ask you whether or not these papers are familiar to you in the course of your supervision of the St. Elizabeths Hospital? A. Yes. These are the clinical records, sheets on which the progress of the patient is recorded as it goes along.

Q. Now, let me ask you, sir, I see here it says impression,
244 schizophrenic reaction, paranoid type in this file. Can you tell us what, Doctor, what doctor had that view? A. Dr. Owens.

THE COURT: What is the date of that one?

THE WITNESS: February 24.

THE COURT: Same date.

THE WITNESS: I think it is the same date. Yes, sir, Your Honor. This is simply typed out and the other is handwritten.

BY MR. OWEN:

Q. Would you say one is more extensive than the other? A. The typed one is more extensive.

Q. Now, let me ask you, Doctor, as to the first page you see here which would be the last entry, I believe your hospital maintains chronology and puts the older papers in the rear of the file and the later papers and so forth? A. Current sheet at the top.

Q. Now, can you tell us who made this report? A. Dr. Cody, who is the second man on the service and who is acting now as Dr. Cushard, Sr., is away.

Q. Now, let me read to you, sir --

THE COURT: What is the date of this?

THE WITNESS: July 1.

MR. LOWTHER: May we approach the bench at this point?

245 THE COURT: Yes.

(Bench Conference.)

MR. LOWTHER: I don't think that reading this to Dr. Overholser is material to this case, I think the court should be so advised.

MR. OWEN: It is.

THE COURT: What is your situation?

MR. OWEN: I would like to read it to the witness.

THE COURT: You can let him read it.

MR. OWEN: I would like to put to him a question based upon a certain content of this report.

THE COURT: That is what I am asking you. You can give it to him and let him read it and if you want to ask a question I will permit it.

(End of bench conference.)

BY MR. OWEN:

Q. I wonder if you could read that as has been requested by the Judge? A. The date, July 1, Dr. Cody. A call was received from Mr. Joseph Lowther, one of the Assistant United States Attorneys today --

THE COURT: That isn't what I suggested to you, Mr. Owen. I thought you wanted to ask the doctor to read the report and then you propose to propound a question to him. That is what you did at the bench.

246 MR. OWEN: Well, I would like for the jury to hear the contents of that, Your Honor.

THE COURT: That isn't what we talked about at the bench. If you want to ask a question you may.

BY MR. OWEN:

Q. Would you care to read it to yourself and not allow the jury to hear? A. Yes.

THE COURT: He is ready, Mr. Owen.

BY MR. OWEN:

Q. Now, in this report, Doctor, it says that Mr. Lowther --

THE COURT: I am letting you do indirectly what you passed on directly, but you may continue, Mr. Owen. Go ahead, sir, you may continue.

BY MR. OWEN:

Q. I would like to know whether you know anything personally about Mr. Lowther trying to get you or one of your staff to testify that the Defendant in this case was mentally competent. A. I know nothing about it personally, no.

Q. What -- was this review of it in this record, the first page you had that Mr. Lowther had made a phone call? A. As I remember, yes.

247 Q. Did you know before testifying today, Doctor, that this record of Mr. Lowther's call for help to St. Elizabeths was in the record of your hospital?

THE COURT: Now, let's be fair, Mr. Owen, about some things, at least.

As a matter of fact, as you know as a lawyer of many years experience that the defense counsel gets witnesses, Government counsel gets witness, Defense counsel talks to witnesses and Government counsel talks to witnesses and Ladies and Gentlemen the most horrifying experience in the world is when neither counsel do speak to witnesses. That is what prolongs the process of justice because if you don't speak to them that delays the process of law.

That is a perfectly proper thing for the District Attorney to get a witness to testify as you did Dr. Miller, sir. I don't know what you are indicating, Mr. Owen.

MR. OWEN: I would object to the court's characterization of counsel's presentation of his case.

THE COURT: The record will speak for itself, of course. I am asking you a question now and as an officer of the court I expect an answer and that will be reflected on the record, too, sir. What are you getting to? What is your purpose?

MR. OWEN: I would like to know, sir, who else over at St. Elizabeths was asked if they would come and testify other than Dr.

248 Owens?

THE COURT: Do you know, sir?

THE WITNESS: I do not know. I should not be surprised at such a call. We frequently have them from both parties in criminal cases where we have the patient under observation. It is not at all unusual, Your Honor.

THE COURT: By both parties, you mean either Government or Defense?

THE WITNESS: Yes. And I may add, if I may, Your Honor, that we call the shots, so to speak, regardless of what we are asked by either side.

BY MR. OWENS:

Q. Doctor, you suggest that you were not surprised at either side calling. Now, let me ask you this: Knowing all the facts surrounding this case which are now within your possession --

THE COURT: I think you better qualify that. This Doctor says he has had no personal contact with this man. He may have seen him. You do not recall whether you have or have not, sir?

THE WITNESS: He has been pointed out to me since and I should say I have not seen him, Your Honor.

BY MR. OWEN:

Q. Knowing all of the circumstances, sir, that you do, are you
249 surprised that Dr. Owens has testified that he arrived at a valid psychiatric conclusion as to this man's mental condition in this court yesterday? A. He is entitled to his opinion.

Q. That wasn't what I asked, Doctor. A. Not having heard him testify I prefer not to comment.

Q. I am summarizing the conclusion of his testimony.

THE COURT: I don't know if you have to summarize it for this doctor, sir. Do you want to do it?

BY MR. OWEN:

Q. Let me show you the second page of the record that you have already referred to which is headed closing notes and ask you what Doctor made that entry? A. It is headed Dr. Cushard. Dr. Cushard was on leave at the moment. It is signed by Dr. Cody who is the second man and counter signed by the clinical director, Dr. Cotaleno.

Q. And what is the date of that? A. April 3. Closing note, at the time he was discharged from the hospital and returned to court.

Q. Now, so far as you are concerned, what from this report, what was the condition, the mental condition or competency of the Defendant Niport?

THE COURT: Before you answer will you come to the bench a minute, please?

(Bench Conference.)

250 THE COURT: As to the closing notes, does this express an opinion, Mr. Owen?

MR. OWEN: Yes, sir.

THE COURT: And of whom?

MR. OWEN: Of the Superintendent of the Hospital.

THE COURT: You mean this Dr. Overholser?

MR. OWEN: Yes. So far as he is concerned in his official capacity.

THE COURT: No, sir, what I am asking is this. Does this express an opinion of Dr. Overholser, sir?

MR. OWEN: I see, Your Honor. Your Honor is correct and I am in error. I will rephrase the question.

(End of bench conference.)

BY MR. OWEN:

Q. From this, sir, can you tell us what you understand to be the opinion on April 3 of Dr. Cody as to the Defendant's condition or competency? A. The statement says diagnosis not yet diagnosed. Condition on discharge undetermined. Competency undetermined.

Q. Now, condition on discharge, what does that mean? A. Ordinarily we record the condition on discharge. We use the terms recovered, social recovery which is perhaps 95 per cent recovery. Completely improved or unimproved. This, however, is simply not
251 determined, undetermined.

Q. Now, -- A. Which indicates again there was a great deal that the conference and the doctors did not know about the case and therefore, did not care to express an opinion.

Q. If we can impose upon your extended psychiatric learning for two more minutes, I would appreciate it as to your view of masochism. Can you give us some understanding of masochism or masochistic as it is used in a scientific sense? A. It is some times used pretty broadly. A man named Socker Masock, oh, 75 years ago or so, wrote some novels, I think, in which the hero or the heroine gained considerable sexual gratification from having pain inflicted upon him. And his name Masoch was attached to this particular phenomenon.

It is often used in rather a loose sense, however, as indicating the type of individual who prefers, who enjoys, who gets gratification whether

directly sexually or not from having inflicted upon him pain. That is the meaning of it.

Q. When you say pain, Doctor, could you -- A. Physically usually but not necessarily.

Q. Do you mean pain of embarrassment or disparagement or derogation? A. It could be by a pretty broad extension mean that. There are some people who seem to have a gift for getting into difficulties and who seem almost to enjoy getting into situations which are painful
252 emotionally or physically.

Q. Is it ever possible to determine the reasons why they have this abnormal desire to get into pained conditions? A. Some times that is a pretty long story. It involves some times prolonged psychoanalysis. There is presumably a reason for about everything. Some times it is very well concealed.

Q. Is your hospital equipped to attempt this type of investigation and correction? A. We have psychoanalysts there. Of course we can't administer to all of the 7,000 patients or so and, of course, it is impossible to administer it to a patient who is not cooperative or who won't talk.

Q. Is it unusual for psychiatrists to be confronted with an emotionally ill patient who does present resistivity and who does refuse to cooperate or act uncooperative? A. Oh, there are various degrees of uncooperativeness and we have a very fair number of patients, perhaps that is why they are sent there.

Q. That often is a symptom of a nervous disorder or emotional disorder? A. It can be.

Q. Now -- it isn't that -- A. But not necessarily.

Q. Now, back to masochism, is that a neurotic or a psychotic
253 disturbance of the emotional network? A. It may not be either.

It may be a personality trait. It may not even come under the category of neurosis or psychosis. It may be a symptom which may be shown in a neurosis or psychosis, but some people who seem to exhibit a certain amount of masochism are going about the streets and doing their jobs every day.

Q. So you could have a masochistic neurotic or masochistic psychotic? A. Oh, yes. You might not apply the term to him except insofar as that was one symptom.

Q. Are you familiar, sir, with Dr. Theodore Wright? A. I know him. Not a great deal.

Q. Are you familiar with Dr. William Spreckle? A. Yes. I read some Spreckle things.

Q. Are you familiar with either of these psychiatric authors and their treatment of masochistic neuroses? A. No, I can't say that I am.

Q. I certainly appreciate your time and education, Doctor, thank you.

THE COURT: Mr. Lowther.

CROSS EXAMINATION

BY MR. LOWTHER:

Q. I think you answered counsel for the Defendant when he was interrogating you about masochism that masochism is a trait as I understand you, Doctor? A. Yes.

Q. And a -- masochism does not of itself ipso facto, so to speak, indicate that the person who may have masochistic tendencies suffer either from a mental defect or mental disease? Do we understand each other? A. Yes.

Q. As I understand you in answer to the Defense Counsel there could be both and probably both walking around the streets of Washington and other cities in this country who have these masochistic tendencies but they are not of unsound mind, they don't have any mental disorder? A. Right. And, of course, there are many degrees, too.

Q. Now, then, I want to ask you a question, Doctor, with respect to that letter that you were shown by defense counsel, namely, the letter dated March 21, 1958.

Is it accurate to say, Dr. Overholser that that letter addressed by St. Elizabeths over your signature, sir, for the purpose of this court is to advise the court as to the composite opinion of the staff doctors who attended the staff conference at which this Defendant Niport was examined, Doctor?

THE COURT: May I interrupt? Opinion, sir, or absence of opinion?

MR. LOWTHER: Opinion, excuse me.

255

BY MR. LOWTHER:

Q. Isn't that correct? A. That is correct.

Q. Now, then, I take it that if, that is not unusual for doctors who specialize in psychiatry, who are employed at your institution, Dr. Overholser, to have differences of opinion as to the mental capacity of patients, isn't that correct, Doctor? A. Not at all uncommon.

Q. And it would not be unusual would it, sir, for a doctor in this instance, Dr. David Owens of St. Elizabeths Hospital to whom this Defendant Niport, under whose supervision Niport came to your institution, it would not be unusual for Dr. Owens to form his opinion based upon his association and observation of this Defendant Niport, would it be up to him to form his own opinion? A. Yes, indeed. We don't try any thought control.

Q. Certainly now, then, you do know, do you not, Doctor, when this Defendant Niport was committed to St. Elizabeths under order of this court, I believe, on February 24, 1958, that he was assigned to Dr. David Owens as Dr. Owens' patient? A. Yes. That is right. Dr. Owens admitted him.

Q. Wouldn't it be accurate to say, Dr. Overholser, that Dr. Owens would be the doctor over there who would be the most familiar with this
256 patient's condition? A. In all probability because he was on that service continually while the patient was there and presumably therefore had more running knowledge of the case.

Q. Now, then, in the letter which you have before you in the court file, namely, the letter of March 21, 1958, that letter indicates, does it not, Doctor, that the reason that the staff at the conference was not able to determine the present competency of this Defendant as of that date of the staff conferences was because this Defendant came before the staff and wouldn't say one word? A. That is correct. It makes that statement in this letter.

Q. Isn't it also accurate to say that in the opinion of the staff as

expressed in that letter, that this muteness exhibited by this Defendant Niport when he came before the staff at the hospital for staff conference was not muteness of a psychotic type, it was a deliberate attempt by this Defendant Niport, isn't that true? A. That is so stated in the letter.

Q. And, now, then, excuse me one second, with the leave of the court, please. Now, I want to refresh your attention, if I may, Doctor, to questions asked you by defense counsel, with reference to this notation by Dr. Owens under date of February 24, 1958, which was the date
257 of admission of this defendant to your institution.

First is the blue sheet.

Now, then, you testified in answer to questions by defense counsel that on February the 24th, according to that note on that sheet which is duplicated, I believe, by one of the papers in the clinical record which I now hand to you that Dr. Owens wrote down there, impression, schizophrenic, paranoid type.

Now, is it accurate to say, Dr. Overholser, that what Dr. Owens means by that is this: That at first blush, so to speak, when he first saw this patient Niport, Dr. Owens had the impression that he might, namely, Niport might be suffering from schizophrenia, paranoid type, isn't that what that means? A. That's what I should infer from the word impression.

Q. Now, is it not also accurate to say, Dr. Overholser, that from the time that a psychiatrist first sees a patient and may form an impression of the patient's condition that thereafter over a period of days or weeks during which time the doctor has further opportunity to observe and talk to the patient that the original impression made may change completely, isn't that accurate? A. Yes, indeed, plus the fact of obtaining outside information.

258 Q. Which the hospital obtained? A. Yes.

Q. You obtained information from, according to your records, from Jerome Niport, the brother of this Defendant, isn't that accurate, sir? A. Through some members of the family who were interviewed. I noted references to that.

Q. Yes. You also obtained information from the Air Force?

A. Yes. There was some documents to that effect.

Q. Now, then, I want to put this to you, Doctor, I want to advise you that Doctor -- first of all let me ask you this question, Doctor. Dr. Owens, I think you started to say when you were examined by Mr. Owen, that Dr. Owens in your opinion is a qualified psychiatrist, is he not, Doctor? A. Yes, he is. Not a diplomat of the Board but we have a very high regard for his psychiatric ability.

Q. I would take it by that you have a high regard for his opinion?

A. Oh, I certainly do!

Q. His psychiatric opinion? A. Yes.

Q. Now, then, sir, I want to advise you that yesterday in this court room Dr. David A. Owens of your staff, in substance testified to
259 his Honor and the Jury as follows: That in his opinion, Dr. Owens' opinion, during the time that this Defendant Niport was at the hospital from February 24 to the date of discharge that Dr. Owens saw no evidence of unsoundness of mind or a mentally defective disease and furthermore that in his opinion, as of the date of December 16, 1957, last December, when this crime to which this man stands trial was committed that Dr. Owens in his opinion would say that the man was not suffering from the disease or a defect at that time.

Now, sir, I would take it there is no contradiction between the expression of that opinion by Dr. David A. Owens yesterday and the conclusion reached in that letter, is that right? A. Not at all.

Q. And the reason there is no contradiction is because that letter is supposed to express the composite view of your staff conference of doctors over there as of the date of that staff conference at which this Defendant Niport came in and wouldn't open his mouth? A. That is right.

MR. LOWTHER: I think I have another question of this witness, Your Honor.

THE COURT: No other questions?

MR. LOWTHER: No, Your Honor.

260 THE COURT: Mr. Owen, any further questions?

MR. OWEN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. OWEN:

Q. Doctor, at this conference, you all take a vote and does the majority rule? A. Well, it may be a little more autocratic than that. Everyone expresses his opinion starting with the junior.

Q. Now, if Dr. Owens is the one that you have such high regard for, had suggested at that staff meeting that he felt that he could come to a valid conclusion as to this man's psychiatric condition, especially since he was the doctor who had the closest contact with this patient, and had been made aware of this highly respected experts view, would you have written the letter which you did or which you signed stating that you could not come to a valid or intelligent opinion? A. Oh, yes. I might have. It appears that -- you see there were six psychiatrists at the meeting plus a psychologist and a male social worker.

In the first place, if one of the junior men might express an opinion which was at a variance with that of a more experienced one it might be that he would be overruled but in general a concurrence is desired. We try to keep the thing on a moderately democratic basis but after all I have the responsibility of signing the letters in the clinical record and the director has the responsibility of approving the findings
261 of the conference. So it might be that it would be some difference of opinion either plus or minus.

Q. And you believe, sir, that you followed the best opinion? A. I suppose we would call it the best, yes. It was the opinion of the preponderance of the people who were there, several of whom were highly experienced and all of the people there I look on as good psychiatrists.

Q. You would consider it the opinion of the best composite of psychiatric opinion that you have available? A. Yes.

Q. Now, you have explained the high regard you have for Dr. Owens' testimony. Do you or are you familiar, Doctor, with his testimony in the Dallas O. Williams case? A. I know that he testified. I don't remember now what he testified.

Q. Do you know, sir, whether or not he changed his testimony from one time to another?

THE COURT: How is this going to help this Jury, Mr. Owen?

MR. OWEN: Well, the opinion of --

THE COURT: I am -- I would assume that doctors when they become enlightened would change their opinion in the interest of decency and honesty.

262 THE WITNESS: I should hope so.

BY MR. OWEN:

Q. Have you changed your opinion as to the competency of Milton Niport?

THE COURT: He has no opinion, sir.

THE WITNESS: I expressed no opinion on that.

THE COURT: He has not seen him.

BY MR. OWEN:

Q. Has the hospital changed its opinion, sir? Has it changed its opinion of the mental condition of Milton Niport? A. No.

MR. OWEN: No further questions.

THE COURT: Doctor, I would like, for my information, to know if that letter of March 21, 1958 states that there is an inability to express an opinion rather than to express an opinion pro or con?

THE WITNESS: We could not express a valid opinion.

THE COURT: Are you speaking in the collective or composite sense as opposed to an individual expressing an opinion?

THE WITNESS: That is right. I merely acted, what I believe is determined an administrative act. The conference came to this opinion or lack of it as in this case.

THE COURT: Because of the reasons therein stated?

THE WITNESS: Yes, sir.

263 THE COURT: Do you have any other questions, Mr. Lowther?

MR. LOWTHER: No.

THE WITNESS: I might say this: That I have a high regard for anybody's opinion doesn't necessarily mean that I would agree with him on that opinion.

MR. LOWTHER: Thank you very much, Doctor. We certainly appreciate your testimony.

THE COURT: Now, let me ask you gentlemen: Is the Doctor as the custodian from the hospital permitted to take the records back there?

MR. STEIN: With the exception of these two which are being turned over to the clerk.

THE COURT: Are you through with them, Gentlemen?

MR. OWEN: Well, it might well be that the jury would care to see these. I would like to offer them into evidence.

THE COURT: The ones to which we referred?

MR. OWEN: Yes, sir, the records in this case.

THE COURT: You are not answering my question. I am not making myself clear. You mean the records in toto in the case?

MR. OWEN: First I would offer all records.

THE COURT: I will deny that, sir.

264 MR. OWEN: Then I would offer the records which have been testified to here in court by Dr. Overholser.

THE COURT: I think it would be well at this time for the clerk to mark the pages so we know what we are talking about, please. Doctor, we will have to ask you to wait for a moment, so if there is any request as to what you have referred we will have it.

THE DEPUTY CLERK: The blue progress notes to be marked as Defense Exhibit No. 2 for identification.

The white paper, clinical note, dated July 1, 1958, be marked as Defense Exhibit No. 3 for identification. And this one closing note, dated April 3, 1958, would be marked as Defense Exhibit No. 4 for identification. That is all.

THE COURT: What was the last one, please?

THE DEPUTY CLERK: The closing note dated April 3. That is No. 4.

MR. OWEN: Only three pages that we are selecting, Your Honor.

THE COURT: You are offering them, sir?

MR. OWEN: Yes, sir, that is correct.

THE COURT: Let me see them. Mr. Owen, I am not quite sure that you want these, do you?

MR. OWEN: We are not trying to hide anything in the report.

265 THE COURT: I want you, Mr. Owen, to know that you are doing something which I wouldn't permit the District Attorney to do. I happened to glance at one section to the article in the April 1 report. This man to be competent to stand trial by Judge Holtzoff in the United States District Court for the District of Columbia. What is the date of this thing? Oh, I will let it go in for whatever it is worth.

MR. OWEN: We kept it down to three pages, Your Honor, on this one and this one.

THE COURT: All right. I will receive them.

MR. OWEN: I believe that the letter which has figured prominently in this case being a technical part of the file of this case --

THE COURT: I will take judicial notice of it, if you want me to.

(Defendant's Exhibits 2 through 4, were marked for identification and received in evidence.)

THE COURT: Now, Gentlemen, Mr. Clerk, will you give the custodian a receipt for the documents which we are keeping? If it becomes necessary for the jury to have any of these exhibits in this case, we will extract them so we don't get anything foreign.

Doctor, you are excused. I thought it might save a trip back here. Thank you.

266 THE WITNESS: These are under the custody of the Clerk?

THE COURT: Yes. The Clerk will give your custodian a receipt so your records will be complete, sir. I understand both sides are content that the Doctor be excused?

MR. OWEN: Yes, sir. Thank you, sir.

MR. LOWTHER: Yes, Your Honor.

MR. OWEN: As our second witness in surrebuttal I would like to recall to the stand the brother of the Defendant, Mr. Jerome Niport.

THE COURT: All right, sir. Might I suggest that Counsel come to the bench for a minute, please?

(Bench Conference.)

THE COURT: What do you want this witness for?

MR. OWEN: To attack validity of Dr. Owens about the conversation he has already testified to.

THE COURT: He is going to testify that Dr. Owens told him that he was unable to arrive at any valid opinion? All right, sir.

JEROME NIPORT

was recalled as a witness on behalf of the Defendant, being duly sworn, testified further as follows:

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DIRECT EXAMINATION

BY MR. OWEN:

Q. You testified previously in this case and have been sworn and you will still continue under the same admonition of the original oath. I believe that you have also heard some or all of the testimony of a Dr. Owens who testified for the Government? A. I have.

Q. Now, in reference to -- let me ask you this: During your conversations or conferences with Dr. Owens at St. Elizabeths Hospital, did he at any time state to you anything in regard to his medical psychiatric opinion as to the mental condition of your brother?

THE COURT: You haven't stated the time.

BY MR. OWEN:

Q. Did he at any time?

THE COURT: Yes or no to that question.

THE WITNESS: Yes.

BY MR. OWEN:

Q. All right. Now, can you tell us at what time or which times?

A. I first saw Dr. Owens on the 13th of March, at which time I went to St. Elizabeths to visit my brother and when I did arrive there there was a notation that Dr. Owens wished to speak to me.

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I called Dr. Owens and introduced my self and he introduced himself and we went back into his office and I said to Dr. Owens, I said, my brother has been here approximately three weeks or maybe a little longer. Have you been able to find out what is wrong with him? And

Dr. Owens said to me we have not been able to find out, we cannot arrive at an opinion or conclusion or what is wrong with him because we don't have any information, sufficient information to base any opinion on.

He asked me if I would be kind enough to sit down and give him the boy's history. He was unable to get anything from my sister upon a previous visit because being younger than my brother Milton she didn't know too much about his childhood.

I readily volunteered everything I could to Dr. Owens as I did in this court room yesterday. And that was about the extent of the visit.

I do remember saying to Dr. Owens during the course of that visit that he asked the families opinion on the matter or our feelings and I expressed to him the fact --

THE COURT: It isn't his opinion you are concerned with now, sir. Your question relates to Dr. Owens opinion.

MR. OWEN: Yes.

BY MR. OWEN:

Q. Now, I believe Dr. Owens stated that you made the statement
269 that you thought your brother was of sound mind. A. That is absolutely incorrect. I in fact said to Dr. Owens if I thought I could take my brother out on the street that day I would hate to do so. I would prefer to have him committed to an institution because I think that is the only way he could get help. That is a rather embarrassing thing to have to say.

Q. Now, was there any subsequent occasion when you conferred with Dr. Owens? A. No, sir. I spoke to him that one time and that time only.

MR. OWEN: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. LOWTHER:

Q. Mr. Niport, this morning you were going through some of these records, going through them at counsel table, were you not?

A. I walked over to the table and I glanced at a couple of them.

Q. Did you glance at the report, your interview contained in the records? A. I did not.

Q. Did you refresh your recollection as to when you saw Dr.
270 Owens or did counsel tell you? A. I remember when I saw Dr.
Owens.

THE COURT: The question is did you refresh your recollection,
sir?

THE WITNESS: I did not.

BY MR. LOWTHER:

Q. Did you look at these records when Mr. Owen and Mr. Stein
and myself were looking at them? A. Not when the three of you were
looking at them.

Q. Did you look at them before or after we looked at them?
A. I glanced at a couple of them before.

Q. Now, then -- A. But I did not glance at the one that dealt
with my interview with Dr. Owens.

Q. Now, on March 13 you did talk with Dr. Owens and he asked
you if you would be good enough to tell what you knew, isn't that right?
A. Yes, sir.

Q. And you say it was on March 13 that Dr. Owens upon your
questioning him told you that we have not arrived at an opinion. We are
not able to form one? A. Yes, sir.

Q. And that is the 13th of March? A. It was on a Thursday.

271 Q. Yes. It is dated. You talked to Dr. Owens over there?
A. Yes, sir.

Q. And that is the only time you talked to him, isn't that correct?
A. Yes, sir. Other than one other time to ask him to extend my visit
a little longer. The second visit I mean.

Q. That is the only time you talked to Dr. Owens wherein he
expressed to you that he was not able to form an opinion, isn't that
right, sir? A. Yes, sir. As far as I can remember, yes.

Q. Now, then, indulge me one second, Your Honor. Now, I want
to ask you this: Do you recall on March 13, stating to Dr. Owens over
at St. Elizabeths in substance as follows, Mr. Niport.

MR. OWEN: Your Honor, I object to this question unless the

Government attorney plans to offer into evidence the document from which he is reading.

THE COURT: I think he can refresh his recollection without introducing the document. I don't know of any rule.

MR. OWEN: I object to his reading a portion of it to the jury without a plan to introduce it in evidence.

THE COURT: I will overrule your objection.

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BY MR. LOWTHER:

Q. Mr. Niport, do you recall telling Dr. Owens when you talked to him on the 13th that you didn't believe that your brother's refusal to talk was in any way connected with mental illness but was more of your brother's general behavior that he would frequently behave in this manner whenever his demands were not immediately satisfied? A. No, sir, I did not.

Q. You did not? A. For the simple reason I don't consider myself as a competent person to volunteer an opinion as Dr. Owens or any psychiatrist. I couldn't -- first of all I had not seen my brother. Who could say I --

THE COURT: You answered the question.

THE WITNESS: No, sir.

BY MR. LOWTHER:

Q. Now, Mr. Niport, do you recall or did you, sir, in fact tell Dr. Owens on the date you talked to him on March 13, 1958, that you did not believe that your brother was mentally ill unless he had been mentally ill all of his life and you felt this was a continuation of his anti-social history dating back to childhood? Did you tell the Doctor that? A. No, sir.

Q. Did you tell the Doctor that you felt something was wrong with your brother in view of his past history but you emphasized the fact that
273 you didn't believe your brother was psychotic but more of a sociopathic type? A. I don't even know the meaning of the word.

Q. You don't? A. No, sir.

MR. LOWTHER: I have no further questions.

THE COURT: Anything further, Mr. Owen?

MR. OWEN: No, sir.

THE COURT: You may be excused.

* * *

274 (Bench Conference.)

* * *

MR. STEIN: We make a motion for a directed verdict on the ground that the Government has not sustained the burden of proving a lack of mental illness or a lack of causal relation to the alleged crime.

THE COURT: I will deny your motion. I think it is a question of fact for the jury.

* * *

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(Jury excused)

THE COURT: So that the record will reflect what Counsel have already been told: I have considered the Defendant's requested instructions. I am going to deny them all as written. I think that you will find in fact that most of them in substance will be covered by the charge that I have already written in the case.

I do, however, want to be specific with reference to two of them, I believe.

MR. STEIN: I think it was four and six.

THE COURT: As to Defendant's No. 4 I will deny that. I will not give it as written, although I will give other than in the sense.

I will say as to the testimony of expert witnesses or a lay witness that the jury, of course, will consider all reasons that they have or lack of reasons in the matter and further give consideration to the time and opportunity and so forth and so on which the person testified to had to
276 observe, understand and see and conclude.

I don't mean to say that is the language I am going to use. I am trying to indicate to you what the substance will be.

I think you are correct, Mr. Stein, when you say it was six. I will deny that. I do not think that is applicable to this type of case.

* * *

COURT'S CHARGE

THE COURT: Ladies and Gentlemen of the Jury, it will soon be your duty to retire to the Jury room, select your foreman and sit and decide the case before you, namely, the guilt or innocence of the Defendant who stands charged of the two offenses of the two count indictment.

The first count charging the offense known to the law as robbery and the second charge a dangerous weapon, to wit a license.

Now, as you know it is the duty of the court to instruct you as to the law of the case and namely the rules and principles of law applicable to a particular case on trial and that you are bound and obligated to follow
301 those rules and principles.

On the other hand you Ladies and Gentlemen are the sole judges of the facts. It will be for you to determine all issues of fact in the testimony adduced from the witness stand and reasonable inferences to be deduced from proven facts.

Counsel for the Government, Counsel for the Defense have the right to make opening statements indicating to you what they hope they may be able to show for their respective sides.

At the conclusion of the case to sum up, as we say, indicating to you what they believe in fact they have been able to show for their respective sides.

The court states to you merely that statements of Government Counsel and Defense Counsel do not constitute evidence in the case and it further states to you that if the recollection of the jury be at variance with the recollection of statements by Government Counsel or Defense Counsel or insofar as facts are concerned, insofar as the Court's statements are concerned, it will be your recollection which will control, you being the sole judge of the facts.

The mere fact that a Defendant has been indicted as indicated by the paper which I have displayed to you is not to be misconstrued as evidence
302 in the case. It is not. The sole purpose of an indictment is to advise the Defendant of the charge or charges which he must face when the case comes on for trial. It is not evidence.

Every Defendant in a criminal case is presumed to be innocent and this presumption of innocence attaches itself to the Defendant throughout the trial.

The burden is on the Government to prove the Defendant guilty beyond a reasonable doubt. If the Government fails to sustain its burden then you must find the Defendant not guilty.

You may well ask what is meant by the phrase a reasonable doubt. It does not mean any doubt whatsoever. Proof beyond a reasonable doubt is proof to a moral certainty, and not necessarily proof to an absolute or mathematical certainty. By a reasonable doubt, as its name implies, is any doubt based on reason, not any principle or capricious conjecture. It is a doubt which is reasonable in view of all the evidence.

Therefore, if after an impartial comparison and considering all the evidence and given due consideration to the presumption of innocence which attaches to a Defendant you can truthfully say that you are not satisfied with the guilt of the Defendant then you have a reasonable doubt. But if after such impartial comparison and considering all the evidence
303 you can honestly say you have an abiding conviction of the Defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your personal affairs, then you have no reasonable doubt.

In courts as well as in the every day affairs of life there are two types of evidence which come into play in determining issues. One is known as direct evidence, the other is known as indirect or circumstantial evidence.

Direct evidence, for example, is evidence of a witness himself as to what he saw or heard as an eye witness of the offense under inquiry. Indirect evidence is supplied by testimony of facts and circumstances which tend to show that the offense under inquiry has been committed and by whom it has been committed. In other words, circumstantial evidence is composed of proved facts which raise a logical inference as to the existence of the fact that is at issue in the particular case which by experience has been found to be so associated with that fact that in the relation of cause and effect they lead to a satisfactory conclusion.

A simple but convincing demonstration of circumstantial evidence is a track of an animal in the snow. If you see rabbit tracks you know

a rabbit has been there just as clearly as if you have actually seen the rabbit.

Both kinds of evidence, direct and indirect or circumstantial evidence have been introduced in this case. Both kinds of evidence are
304 equally entitled to consideration by a jury. Some times a jury may be more convinced by indirect or circumstantial evidence than by direct evidence. But the rule of law is that whether the evidence by direct or circumstantial or a combination thereof before there may be a conviction by a jury you must find that the evidence adds up to proof beyond a reasonable doubt.

I said to you that you are the sole judges of facts. So too are you the sole judges of the credibility of the various witnesses that come before you. In determining whether you believe a witness or not you take into consideration these facts or circumstances. Namely, in considering his testimony you will weigh his demeanor on the stand, his manner of testifying, whether he impresses you as having an accurate memory and recollection, whether he impresses you as a truth telling individual, his apparent candor or fairness or lack of it, the interest which he has as a result of the trial of the case, if any, his bias and prejudice for or against the Defendant, if any be shown, his opportunity of knowing the facts and circumstances by which he testified, and then from all of these facts and circumstances it becomes your duty to give proper weight to the testimony of each and every witness who has appeared before you.

305 You are instructed that no inference of guilt arises against the Defendant because of his failure to testify as a witness in his own behalf.

Counsel for the Defense has called attention to the fact that this man has heretofore been convicted of crimes. The court states to you the fact that a man has been previously been convicted of a crime is not evidence of his guilt as to the particular crimes which you have here for consideration.

The sole use of prior convictions is to pass upon the credibility of the person, if that person testifies, and the court further instructs

you that if you find that any witness or witnesses for the Government or for the Defense testified falsely as to a material fact about which he or they could not be mistaken then you may deem it wise to so disregard the entire testimony of such witness or witnesses except where you find it corroborated by other credible testimony.

Count one, as I intimated or stated to you, charges this Defendant with the offense known to the law as robbery. The statute on which this count is based insofar as pertinent to your inquiry reads as follows:

306 "Whoever by force or by violence, whether against resistance or by sudden or stealthy seizure or snatching or by putting in fear, take from the person or immediate actual possession of another anything of value is guilty of robbery."

In order for you to find this Defendant guilty of robbery as charged in Count one you must find that the Government has proved beyond a reasonable doubt the following essential elements: One, that the Defendant took something of value from the complaining witness.

Two, that he took it unlawfully and with the intent to convert it to his own purpose.

Three, that he took it from the complaining person by immediate actual possession and four, that he took it by force or violence against resistance or by sudden or stealthy seizure or snatching or by putting the complainant in fear.

As to the first element that the Defendant took something of value, the value of the thing taken is of no consequence.

As to the second element that he took another's property unlawfully and with the intent to convert it permanently to his own purpose, intent ordinarily cannot be proved directly because there is no way of scrutinizing the operation of the human mind, but intent may be adduced from circumstances and things done and from things said and a person is presumed to contend the natural and probable consequences of his act.

307 As to the third element that he took it from the complainant person or immediate actual possession, immediate actual possession

means that the thing taken may be on the person or within the reach of the person so long as it is considered to be in such possession that if the complainant knew that his or her property was being taken such knowledge would likely result in physical violence or struggle for the possession of the property.

As to the fourth element that the Defendant took the property by force and violence against resistance or by sudden or stealthy seizure, snatching or putting by complainant in fear, you have heard the evidence and that element needs no explanation.

Now, as to Count two: Charges this Defendant with carrying a dangerous weapon, namely, a pistol. The law on which Count two is based reads as follows:

"No person shall within the District of Columbia carry either openly or concealed on or about his person, except in a dwelling place, a place of business or on other land possessed by him a pistol without a license therefore issued as hereinafter provided for, any dangerous weapon capable of being so concealed."

In order for you to find the Defendant guilty as to count two, you must find that the Government has proved and beyond a reasonable doubt first that the Defendant was carrying openly or concealed about his
308 person a pistol, a dangerous weapon. And secondly that he was not in his dwelling place or place of business or upon other land possessed by him, the Defendant, and third, that he did not have a license for such pistol.

The defense has been stated by defense counsel in this case that it is lack of mental capacity. In other words, the defense has not denied and it is not required to deny, the Government is required to prove beyond a reasonable doubt all essential elements of the two offenses in question, but they base their defense primarily on the question of capacity.

In other words, that the defense is primarily that on the date the offense was committed he, the Defendant, was suffering from a mental disease or mental defect and that his acts were the product of such mental disease or mental defect.

Of course, the defense of insanity has been raised in this case.

In order for you to convict the Defendant of the offense which he is charged in count one and in count two you must find that the government has proved beyond a reasonable doubt not only all the essential elements of the offenses charged, but also either that the Defendant was not suffering from a mental disease or defect at the time of the offense, or and if you should find that he was suffering from a mental disease or

309 defect that the offense was not the product of any mental disease or mental defect from which the Defendant may have been suffering at the time of the offense.

I shall now instruct you in the law pertaining to insanity as a defense: The law does not hold a person criminally responsible if he is mentally deranged and his derangement caused him to commit a crime, but it is not every kind of mental derangement or mental deficiency which is sufficient to relieve a person of responsibility for his acts. On the contrary, a person may suffer a mental abnormality and still be answerable for his unlawful acts.

In order for a person to be relieved of the responsibility for the crime by reason of insanity there are two requirements. One, he must have suffered from a mental defect or disease at the time of the offense. Two, his act must have been the product of that mental defect or disease.

As to the first requirement, that he was suffering from a mental disease or mental defect, when I say disease I mean a deranged or abnormal mental condition considered capable of either improving or deteriorating and which may be either general or the result of an injury or residual effect of a physical or mental disease.

310 As to the second requirement that the criminal act was the product of a mental abnormality this simply means that the act must have resulted from or been produced or caused by the mental disease or mental defect suffered by the Defendant or to put it another way, that the Defendant would not have committed an offense but for his mental disease or defect. For example, if you should find that the Defendant

committed the offense, robbery and carrying a dangerous weapon of which he is here charged and further find that the Defendant was at the time he committed the robbery or was in fact carrying a dangerous weapon, a pistol, suffering from a mental disease or defect which so affected him that he was incapable of distinguishing right from wrong or could tell right from wrong but was incapable of controlling his actions then you would find that the Defendant's act was the product of the Defendant's mental abnormality.

To repeat, a person is not relieved of a criminal responsibility merely because he suffers a mental disease or defect at the time of committing the crime or crimes. He would still be held responsible for his unlawful act if there was no causal connection between his mental abnormality and the act. Basically there is a presumption of sanity.

Every person is presumed to be sane until the contrary appears. However, when there is some evidence of mental disorder as here, then
311 the presumption of sanity vanishes from the case and the burden is on the Government to prove beyond a reasonable doubt that at the time in question the Defendant was of sound mind or if he suffered from a mental disease or defect that the offense was not caused by the mental disease or defect just as the burden is on the government to prove all the other elements of the offense or offenses.

If you should find that the government has failed to prove one or more of the elements of the offenses charged in count one and count two, as I defined them, then you must find the Defendant not guilty under such count or counts.

If you should find the government has proved all of the elements of the offense known to the law as robbery and all of the elements of the offense, carrying a dangerous weapon, namely, a pistol, but you have a reasonable doubt as to whether the offense or offenses were the product of a mental disease or defect existing in the Defendant at the time he committed the offense then you would as to such count or counts find the Defendant not guilty by reason of insanity.

If, however, you should find the government has proved either the robbery count or the carrying of a dangerous weapon, namely, a

pistol, and also has proved beyond a reasonable doubt either that the
312 Defendant was of sound mind at the time of the offense or offenses
or that the act or acts was not caused by any mental disease or defect
from which the Defendant may have been suffering, then you may find
the Defendant guilty under such count or counts.

On the issue of insanity among the witnesses who appeared in
this case were members of the medical profession specializing in the
science of psychiatry.

Such a witness is usually referred to as an expert witness. A
person who by education, study or experience has become an expert
in any art or science or profession and who is called as a witness may
give his opinion as to any such matter in which he is versed and which
is material to the case.

You should consider the testimony of the different experts and
weigh the reasons which they give, if any are given for such opinion.

You are not, however, bound by any such opinion or opinions. You
may give to the opinion or opinions such weight as you deem it or them
entitled to receive in the light of all the circumstances, whether that be
great or slight, and you may reject any or all of the expert testimony if
in your judgment the reasons for it are unsound.

You have also heard the testimony of certain lay persons with
respect to the Defendant's mental condition. When the issue is one of
313 sanity or insanity opinion testimony of lay witnesses may be
received in evidence and considered by the jury.

In weighing the testimony of these lay persons it is proper for
you to consider the surrounding circumstances as to each witness, his
opportunity of knowing about the matters which he has testified, to his
willingness to expound fairly in reference to his knowledge and the
basis for his conclusions and the fact that he is a lay person.

In weighing both lay and expert testimony as to the Defendant's
mental condition you will, of course, consider the extent of the witness's
observation of the Defendant or observations and the nature of the wit-
ness's contact or contacts with the Defendant.

While you should consider the opinions of both lay and expert witnesses, as I have told you, you are not bound to follow the conclusions of any one of them because in the final analysis the issue of sanity or lack of sanity, as in all other issues of fact, you are the judges thereof, you are the sole judges.

If your verdict is not guilty by reason of insanity this means that the accused will be confined in the hospital for the mentally ill until the superintendent has certified and the court is satisfied that such person has recovered his sanity and will not in the reasonable future be
314 dangerous to himself or others and in which event, and at which time the court will order his release on the condition or under such conditions as the court may see fit.

To summarize you may find as your verdict in this case the Defendant guilty or not guilty as to count one. Guilty or not guilty as to count two. Guilty as to both count one and count two, not guilty as to count one and count two, or a combination or guilt or innocence or you may find this Defendant not guilty as to either or both of the counts by virtue of insanity.

Has either counsel anything to add?

MR. OWEN: May we approach the bench, Your Honor?

(Bench Conference.)

MR. OWEN: Your Honor, I understand in this new law requiring an investigation in case the verdict is not guilty by virtue of insanity, it seems to me unfair to say to the jury in so doing as relieving a person from responsibility for their acts.

I noticed throughout your charge that you used the expression that you may relieve him from his responsibility for these acts if you find him to be mentally ill or be mentally deficient.

I think it would be better in cases of this type, not to suggest that
315 a person would be relieved from responsibility because in effect they are still paying a certain debt to society and are not relieved from their responsibilities, as in the case of not guilty or in the old case of not guilty by virtue of insanity.

THE COURT: I concluded by your own note, by reading the statute.

MR. STEIN: He read the requested instructions.

MR. OWEN: Do I make myself clear to the court?

THE COURT: I understand that.

MR. OWEN: That under the new law that requires a person to be committed until Your Honor decides he is ready to be discharged upon complete investigation. He is certainly not relieved of his responsibility or his duties to society, by such a verdict being returned by the jury.

THE COURT: I think if you read what I said in my charge you will get an entirely different impression.

MR. OWEN: Your Honor has done a considerable amount of research.

THE COURT: I tried to.

MR. OWEN: Of course, we may disagree, you certainly indicate a considerable amount of research.

Now, I wonder, if it wouldn't be too much trouble to the Court, if he would turn back to Your Honor's prepared instructions to a point
316 where the court refers to defect of mind, which is just before Your Honor's coverage of the requirement that the act be a product of a defective mind. Goes back to the middle of Your Honor's instructions.

THE COURT: I think what I am quoting there is the Court of Appeals. What they say, sir.

MR. OWEN: If Your Honor will read it. When you describe what a mental defect is.

THE COURT: I said in this part, at least "as to the first requirement, that he was suffering from a mental disease or mental defect, when I say disease I mean a deranged or abnormal mental condition considered capable of either improving or deteriorating. When I say defect I mean a deranged or abnormal condition which is not considered capable of either improving or deteriorating and which may be either general or the result of an injury or residual affect of a physical or mental disease." That is not my language. That is a direct steal from the Court of Appeals.

MR. OWEN: It is rather confusing language.

THE COURT: I think if you read it in context you will get an entirely different view.

MR. OWEN: That is the only objection I have.

(End of bench conference.)

*

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341 [Filed Aug. 1, 1958]

JUDGMENT AND COMMITMENT

On this 1st day of August, 1958 came the attorney for the government and the defendant appeared in person and by counsel, Ralph Stein, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of

ROBBERY AND CARRYING A DANGEROUS WEAPON as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four (4) years to Twelve (12) years on count one; One (1) year to Three (3) years on count two; said sentences to run concurrently.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ R. B. Keech
United States District Judge.

342 [Filed Aug. 11, 1958]

NOTICE OF APPEAL

Name and address of appellant

Milton Niport

D. C. Jail, 19th & A-Sts., N.W., Washington, D. C.

Name and address of appellant's attorney

None

Offense Robbery, Carrying a Dangerous Weapon

Concise statement of judgment or order, giving date, and any sentence

Appellant was convicted of the above offenses on July 17, 1958

Appellant was sentenced to serve 4 to 12 years on August 1, 1958

Name of institution where now confined, if not on bail

D. C. Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Aug. 8, 1958
Date

/s/ Milton Niport, pro se
Appellant

/s/ Wm. E. Owen
/s/ Ralph Stein
Attorney for Appellant.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14679

MILTON NIPOIT, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

172

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

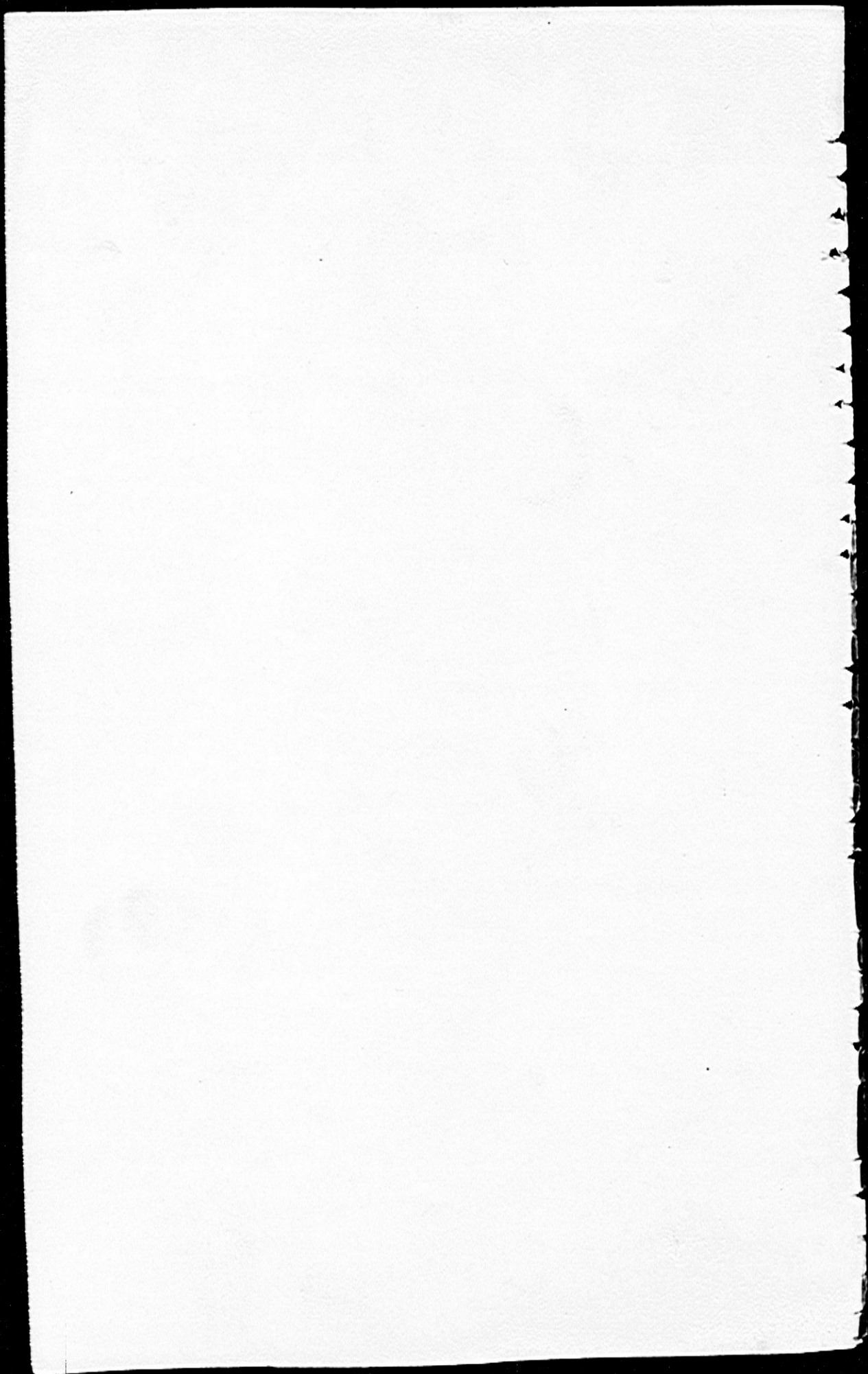
OLIVER GASCH,
United States Attorney.

**CARL W. BELCHER,
HARRY T. ALEXANDER,**
Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED NOV 7 1958

Joseph W. Stewart
CLERK



QUESTIONS PRESENTED

In the opinion of appellee the following questions are presented:

1. Where major conflict exists in expert psychiatric testimony, and where expert opinion, sufficient to sustain a finding of sanity is corroborated by lay testimony and opinion, which is more than ordinarily important because of appellant's chiefly autobiographical reasons presented on the issue of insanity, is a finding of sanity arbitrary disregard for expert opinion?

2. Did the prosecution use improper tactics in a non-capital case by presenting, on rebuttal, expert psychiatric testimony, where the name of the psychiatrist was not tendered to appellant prior to trial?

3. Were not the instructions of the court with regard to lay testimony full and complete?

4. Was not the trial court impartial in its interrogation, comments and rulings with respect to each of the three psychiatrists?

(r)

Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above matter.

I am sorry to hear that you are not satisfied with the result of the examination of the papers. I have been very careful to examine them, and I believe that I have done so thoroughly. I have also been very careful to follow the instructions of the Board of Directors, and I believe that I have done so to the best of my ability.

I am sure that you will understand that I am not responsible for the result of the examination. I am only responsible for the manner in which I have conducted the examination.

I am, Sir, very respectfully,
Your obedient servant,
J. H. [Name]

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14679

MILTON NIPORT, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On July 17, 1958, a jury convicted appellant, Milton Niport, as charged in a two count indictment, of robbery and carrying a pistol (22 D. C. C., §§ 2901, 3204), perpetrated in the District of Columbia on December 16, 1957 (J. A. 1, 9). Appellant received concurrent sentences of four to twelve years on count one and one to three years on count two (J. A. 154). This is a direct appeal (J. A. 155).

a. Commission of the Crimes

The Tsintolas Realty Company is located on the Northeast corner of Third and H Streets, in Northwest Washington. The realty building has windows on both Third and H Streets with an entrance that runs cater-cornered. Surrounding the realty building on the north and east sides is the "L" shaped building housing Universal Pictures.

About 12:15 in the afternoon of December 16, 1957, Miss Tsintolas, an officer of the real estate company was present and

had the offices open for business when she observed appellant, walking east, pass the H Street window as if going to Universal Pictures. Appellant was carrying a brief case, as do people who normally go to the picture company. Miss Tsintolas next observed appellant "standing in front of my store front looking into the office." Quite a few clients were in the realty office as appellant, thereafter, entered, and waited until all clients had completed their business and a maintenance man employed by the company remained to secure his work orders. When asked if he could be served, appellant "insisted" that Miss Tsintolas wait on the maintenance man. Informed that he could be waited on first (since appellant was unaware of the true business of the maintenance man), appellant came to the center of the office counter, and inquired about first a furnished apartment, then an unfurnished apartment. In order "to get rid of him," Miss Tsintolas gave appellant the address of an apartment house in the 5400 block of Seventh Street, Northwest, and advised that the resident manager would help him. Appellant left the office, the maintenance man left, Miss Tsintolas busied herself with answering three telephones and appellant, in about five minutes from his departure, passed the Third Street window and entered the office. He waited until Miss Tsintolas had hung up the phone from her last call, started moving toward the side of the counter, and while her back was still facing appellant, the latter came behind the counter with great rapidity, but with a "slippery sound" and said, "Lady, I [don't] want you to get scared; I just want you to do what I tell you to do." (J. A. 11-13.) Miss Tsintolas recounted her experience as follows (J. A. 13):

* * * when I turned my head around I saw him standing behind me. I didn't notice the gun at first. I looked at him two or three times to make sure that I wasn't imagining and I tried to pull myself together but when I looked at him the third time my eyes glanced at the gun that he had in his hand and he was pointing out to me, and I took a few steps—then he opened up his brief case and said "I want you to put all the money you got under the counter in my brief case." So I took a

few steps toward the front of the counter and at that time I was pregnant and I tried to control myself and not—hesitating for a few minutes because of my condition. So he said, "If you ring the alarm I will let you have it." And I told him, "Man, we don't have an alarm in this building; we don't have no use for it." So, after he made that remark, I took the money and put it in his brief case.

Appellant had reference to the company money amounting to \$456, representing the morning's receipts—some of which had been collected and placed under the counter in a cash drawer during appellant's first visit to the office. Pursuant to appellant's order and warning, Miss Tsintolas threw the money in his brief case. (J. A. 14.)

Thereafter, the victim obtained her pocketbook from the back office pursuant to appellant's inquiry, informed appellant that the contents—four dollars—were "all I got," placed the bills in appellant's brief case pursuant to his direction "let me have that, too," and reentered the back office according to direction and appellant's second warning, "I want you to go in the back office. I don't want you to make a move or else I am going to let you have it" (J. A. 14-15). After locking herself within the inner office the victim peered through an inner office window and observed appellant leave the premises. Upon seeing her business associates returning from across the street, the victim mustered enough courage, after reaching the front door, to follow appellant as he proceeded north on Third Street with the brief case in hand, turn eastward into the alley in the rear of Universal Pictures and enter his convertible car. Appellant started his car after some difficulty, and proceeded eastward towards Second Street. Miss Tsintolas mentally recorded appellant's tag numbers which she gave to two policemen whom she met while returning to her office (J. A. 15-16).

On cross-examination of Miss Tsintolas, appellant elicited among other things that he was well dressed, very neat; that he wore a shirt, tie and overcoat; that he was well shaven, well-groomed and that his movements were average, neither fidgety nor nervous when the robbery was perpetrated (J. A. 18, 21, 22).

Appellant was arrested in the City of Baltimore, Maryland, on December 20, 1957—four days after his crimes (J. A. 32).

(b) The Defense of Insanity

The defense of insanity was presented through a psychiatrist, Dr. Michael M. Miller, and appellant's brother, Attorney Jerome Niport of Maryland. Dr. Miller interviewed appellant on three occasions during March, 1958, approximately three months after the crime of December 17, 1957 (J. A. 49). Appellant was not given a physical examination (J. A. 66). The doctor concluded that appellant was intelligent (J. A. 59), possessed of a good memory (J. A. 60), and was of sound mind at the time of his interviews, although he suffered "emotional disorders" (J. A. 50, 64, 68), diagnosed as "masochistic neurosis" (J. A. 58). The doctor expressed his opinion that appellant's crime was a product of the emotional disorder (J. A. 50).

On direct examination Dr. Miller disclosed appellant's "case history," compiled principally from appellant's autobiography (J. A. 50, 51, 52, 53, 54, 57-58, 68), "all" of which was confirmed "by the history from the family" (J. A. 52, 56),¹ and some of which was confirmed by appellant's brother (J. A. 50, 53).

Primarily from appellant's autobiography, the doctor testified that appellant came from a family of high social standing in their Baltimore community (J. A. 54-55, 57). Appellant's father was a businessman, his brother an attorney and a sister a nurse (J. A. 49). Appellant, like his brothers, received no demonstrative love from his father (J. A. 49, 56). However, appellant's fantasy of being a "field marshal" was accentuated by his father's "early overindulgence" with gifts. "Then when his father's attitude changed radically, particularly during pre-adolescence," appellant was "unable to adjust satisfactorily to the change."² Appellant became "deeply upset" by the

¹ Dr. Miller did not interview appellant's mother, who was in Florida at the time, nor appellant's sister (J. A. 44)—the remaining members of the family (J. A. 68). Appellant's brother communicated information to the psychiatrist from appellant's mother (J. A. 70).

² Dr. Miller testified that appellant's father showed no "gross-intolerance" of appellant "while he was quite young", but that during pre-adolescence,

change to "excessive and uncompromising demands" (J. A. 56-57).³

In contrast to his brothers, appellant "dogmatically and stubbornly resisted his father's will" (J. A. 50, 54). When but a "young boy" appellant "discovered" that he could "strike back" and "manipulate" his father by "getting into trouble" (J. A. 54, 57). Appellant's reasoning was expressed thusly (J. A. 54):

Father couldn't bear for him to get into trouble because that meant the possibility of scandal, and prestige was vitally important to his father. So that Milton *found* that it was most satisfying to himself that, for example, when he was a little boy that he might refuse food in order to hurt his mother or father. He *felt* because he hurt mother he was hurting father. He *knew* that father was sensitive to this.

By punishing himself he could strike back at his father. By getting into trouble and hurting himself he could directly strike his father. He *discovered* that this method worked very well and whenever he would have difficulties with his father in his later years, when they were having a severe argument, a severe conflict, would go right out and get into difficulties.

And many of these difficulties that he would get into were senseless from a monetary point of view or material point of view. They were pointless, but *they would succeed in accomplishing the objectives that he wanted*

the father became "increasingly severe" permitting appellant "little opportunity to play with other children and imposing very painful discipline" (J. A. 50).

³During his early teens, appellant did not appreciate having to spend most of his free time in his fathers' liquor business. Neither the type of business nor making money made much sense to appellant (J. A. 50). The demands also included deprivation of associations with boys and girls (J. A. 51). The doctor testified that appellant's father did not understand appellant's needs. The father's actions also included making appellant's life miserable by driving friends out of the home, interfering in appellant's plans, deprecating him (J. A. 53) and expressing desires for appellant to excel in his schoolwork (J. A. 57).

to accomplish, namely, to bring scandal and disrepute upon the name of the family. [Emphasis supplied.]

Contrary to the foregoing *conscious* conduct of appellant, Dr. Miller later testified that appellant "would unconsciously protest by getting into difficulties", and that he *unconsciously* "found a way to get revenge on his father and the family" (J. A. 57).

Dr. Miller testified that appellant's motive in the instant crime was not for monetary gain or money, but to "strike back at the family"; that appellant would pursue this avenue "whenever the family denied him love or what symbolized love to him" (J. A. 54-55).

From a paper representing a "complete factual statement prepared by the family", containing "serious robberies and felonies" of which appellant had been convicted "all of his life" (J. A. 56) the doctor opined that appellant followed the "same pattern" (J. A. 55-56, 58) as shown by the following testimony and colloquy (J. A. 55).

A. * * * He would always—he would never take many steps to really defend himself or protect himself, would usually manage to get arrested shortly and apprehended shortly after the offense. But he unconsciously—he really wanted to really punish himself and inflict this shame on his family.

Q. Do I understand that you meant he wanted to get caught?

A. *He unconsciously acted in a masochistic manner. A self-punishing manner. "Masochistic means to hurt self in order to hurt someone else. In this case it was his family, particularly his father [deceased], and then the rest of the family who followed the directive of his father."* [Emphasis added.]

Prior to his specific conclusion that appellant "is suffering from a very severe masochistic neurosis" (J. A. 58), Dr. Miller gave the following testimony (J. A. 57-58):

* Appellant's father was deceased at the time of the crimes (J. A. 65).

He *learned* from his preliminary efforts he could really hurt his father by hurting himself, and we had some discussion. He recognized this more clearly. He stated: I didn't need this money. What I did makes no sense to me whatever. But I do remember how I felt a bitter satisfaction out of the smearing headlines in the Baltimore papers. I thought of how ashamed my father would feel. He had to learn the hard way. Me too, I guess. What stubborn fools.

My parents told me a number of times how ashamed they were of me and how I was blackening the family name.

Everything was fine in the beginning when I came out on parole. Then their attitude changed. I sensed they would drive me to do something again. *I told mother then by not helping me financially and not trusting me, severely curtailing my freedom, you are forcing me to go bad.*

The first few months are the crucial months for a successful adjustment, he went on. *I can't understand why they spend so much in lawyer fees and time and trouble to help me and then to abandon me when I need their help and understanding badly for just a little while longer.* [Emphasis added.]

Thereafter, Dr. Miller testified that "masochistic neurosis" is a mental disease (J. A. 60).

On *cross-examination*, Dr. Miller testified that at the time of the crime appellant possessed a "kind of temporary insanity"; that he was incapable of exercising rational control or distinguishing right from wrong and acted upon an irresistible impulse (J. A. 64-65).⁵ The psychiatrist expressed his theory

⁵ In rebuttal to this type of testimony is the testimony of five lay witnesses presented by the Government, including Miss Tsintolas, the victim of the instant armed robbery, two of the three policemen from Baltimore, Maryland, who arrested appellant at his home four days after his crimes, and two policemen from the District of Columbia who returned the fugitive from Maryland to the District of Columbia. Specifically, Miss Tsintolas expressed the opinion based upon her observations and close contact that appellant was of sound mind at the time of his crimes (J. A. 25); that he

that following the death of appellant's father, appellant's conduct was primarily directed against his mother, who like his father denied him love—symbolized by the denial of financial help (J. A. 67-68).

On redirect examination, during interrogation by the court, the psychiatrist testified that appellant was "a sadistic masochistic personality" (J. A. 71).

Jerome Niport testified that his family realized ever since appellant was three years old, that "there is something wrong with him mentally."⁶ At the age of three a neighbor had

acted like those of us who have "our minds together" (J. A. 26) and that he "knew what he was doing" (J. A. 27). Officer John Auld of the Baltimore City Police Department testified that during his observations of and conversations with appellant, the latter talked rationally, was clearly understood and acted normally. The officer, who had observed persons he considered of unsound mind, concluded that appellant was of sound mind (J. A. 32-35).

Sergeant Joseph Judd testified that during his fifteen and a half years on the Baltimore City Police Department he had occasion to observe approximately one hundred and eighty or ninety people who were of unsound mind; that he conversed with and observed appellant, and that appellant talked and acted normally. The officer opined that appellant was of sound mind (J. A. 40-42).

Detective Louis Blancato had been a member of the Metropolitan Police Department for six years, during which time he had observed approximately one hundred and thirty-seven persons who in his opinion were of "unsound mind" or "emotionally ill" (J. A. 38, 40). The officer approximated that as a civilian he had seen two hundred more persons he considered "emotionally ill" (J. A. 40). The officer observed and conversed with appellant on December 20, 1957, commencing with appellant's being received as a fugitive in Baltimore and terminating with his being turned over to a United States Marshal in the District of Columbia (J. A. 37-39). Appellant neither acted nor talked abnormally. It was the officer's opinion that appellant was of sound mind, and without emotional illness (J. A. 39-40).

Detective Sergeant Joseph Bonaccorse had been a member of the Metropolitan Police Department for fifteen years, during which time he had observed about fifty persons who were of "unsound mind" (J. A. 43), "emotionally ill or mentally ill" (J. A. 44). The officer had accompanied Officer Blancato to Baltimore to take the fugitive into custody, and was in appellant's presence. Appellant did not evidence abnormality in his conversation, nor was his conduct abnormal or unusual. The officer was of the opinion that appellant was of "sound mind" and "without any type of mental illness" (J. A. 42-45).

⁶ However, appellant did not represent "the general picture of a person that you classify insane * * *" (J. A. 74).

appellant summoned to juvenile court because appellant was "mischievous" and the woman had gotten "fed up with him" (J. A. 80). At ages ten and twelve appellant was in the Baltimore juvenile court on "larcenous type" crimes. He was withdrawn from public school at the age of thirteen because of "trouble" he had caused, placed in a military school and after a few months was withdrawn upon the school's request.⁸ Appellant returned to public school in Baltimore where he remained until his voluntary enlistment in the Air Force at seventeen years of age. (J. A. 74-75.⁹) Appellant's parents signed for his enlistment because "they thought perhaps the service would teach him some responsibility and discipline." Twelve or thirteen months of appellant's Air Force tenure was spent in the "brig" for matters of *non-serious* nature—such as "insubordination and * * * absence over leave." Appellant's enlistment terminated with a bad conduct discharge after a larceny conviction. Because of "his past behavior" appellant's family "was not surprised" (J. A. 76).

The witness testified that his family attempted "psychiatric treatment" for appellant on one occasion when he was involved in the Baltimore Juvenile Court (J. A. 76).¹⁰ The witness further testified that upon appellant's discharge from military service the family thought he "needed some help"; that they "wanted to help him" and tried to do everything they could, but appellant "more or less laughed it off" and refused help. Appellant lived at home without any expenses and was given an opportunity to work in his father's business (J. A. 77). Appellant's father and mother had always provided for appellant (J. A. 77, 81).¹¹ He successfully passed the Maryland high

⁸ The technical charge involved walking across a neighbor's lawn. Appellant's mother was told by the judge to take the baby home (J. A. 74).

⁹ Appellant was apprehended taking demerits of other students from a demerit box.

¹⁰ Appellant's brother testified that appellant "seemed to not to want to conform to the regulations of the school" (J. A. 75).

¹¹ Apparently this consisted of no more than an *examination* after which the psychiatrist predicted, to appellant's parents, "they were going to have a lot more trouble with [appellant]" (J. A. 77).

¹² With respect to material things, the witness testified that appellant's parents treated him as a son should be treated and further, "None of us ever wanted for anything" (J. A. 81).

school equivalent examination in 1952¹² and was tentatively accepted in the University of Miami where he was to have enrolled (J. A. 78).

While visiting relatives in New York during the summer of 1953, appellant "ran into a gang of boys up there and they went on a holdup spree" which practically covered "the whole eastern part of the United States, Brooklyn, New York, and Manhattan, New York, New Jersey, Miami, Florida, and * * * Massachusetts" (J. A. 78).¹³ Upon the completion of cross-examination, appellant closed his case (J. A. 82).

In addition to the rebuttal testimony referenced in footnote 5, *Dr. David J. Owens*, a psychiatrist, testified that appellant was under his supervision at Saint Elizabeth's Hospital from February 24th until April 3, 1958¹⁴ (J. A. 84, 93), during which time the doctor was primarily responsible for appellant's observation and study (J. A. 107). A physical examination upon admission proved no organic disorders existed (J. A. 84). Appellant was cooperative during his physical examination (J. A. 104), but was extremely uncooperative during his mental examination—with respect to simple facts of his background history (J. A. 85-107). Time, techniques, and maneuvers proved that appellant voluntarily withheld the information requested. When "questioned in other ways and after further questioning [appellant] would reveal the information that was requested of him" (J. A. 85).

Dr. Owens expressed his opinion that appellant is without any mental disorder, a disease or defect, with specific reference to the date of the crimes (J. A. 88, 99, 101, 106, 113, 116). This opinion was based upon a history (J. A. 87), compiled from observation and study of appellant, information received from appellant's brother and sister, as well as information received from the Army¹⁵ (J. A. 111, 113).

¹² Appellant had quit high school to enroll in military service (J. A. 78).

¹³ Appellant's holdups in Lawrence, Massachusetts; Brooklyn, New York; and Miami, Florida, were armed robberies involving a pistol (J. A. 81, 82).

¹⁴ Appellant was committed under Court order pursuant to 22 D. C. C. § 301.

¹⁵ Dr. Owens explained that his opinion did not conflict with the conference report which concluded that it could not reach a "valid opinion" as

Appellant's behavior on the wards was normal (J. A. 88). Neither in the history obtained from appellant, nor in his behavior was there evidence of "abnormal mental contents" such as delusions, hallucinations, grandiose ideas, or ideas of persecution that would indicate a psychotic condition existed. Appellant's "emotional response" to his situation was not abnormal (J. A. 87).

Dr. Owens had an extended interview with appellant's brother, Jerome Niport, during which the question of appellant's mental condition was discussed. Appellant's brother then stated that appellant's uncooperativeness during psychiatric interview, is the same type of behavior appellant exhibited in his past life; that appellant would "pout or * * * refuse to talk to anyone, if his immediate demands were not met" (J. A. 91, 111). Appellant's brother did not inform the doctor that appellant had ever received psychiatric *treatment* only that appellant had been examined in his youth. Nor did appellant's brother inform that it was concluded that appellant was emotionally or mentally ill (J. A. 111-112).

Dr. Owens further testified that the term "masochistic neurosis" is not listed among the psychoneuroses contained in the American Psychiatric Association Manual (J. A. 89, 105). There is, however, what is known to psychiatry as a "masochistic trait," which is not a neurosis, but could be one of the symptoms. It does not mean that a person possessing such a trait suffers from a neurosis (J. A. 90, 105). Contrary to Dr. Miller's initial testimony (J. A. 55) Dr. Owens testified that the theory of hurting one's self in order to hurt another is both sadism and masochism (J. A. 106).¹⁶ That appellant was demanding, belligerent (J. A. 107), and arrogant (J. A.

to appellant's mental condition and competence to stand trial. The conference report means only that those doctors present, to whom appellant had not been principally assigned for observation and study, had insufficient information upon which to predicate an expert opinion because appellant voluntarily and wilfully refused to cooperate. He simply wouldn't answer the questions propounded during the conference (J. A. 91-93). The letter to the District Court dated March 21, 1958, states no less (J. A. 3-4, 93).

¹⁶ After extended testimony Dr. Miller testified on redirect examination that appellant is "a sadistic masochistic personality" (J. A. 71).

109), on occasion while at the hospital, or that he was difficult to get along with is, standing alone, no indication that appellant is neurotic or mentally ill (J. A. 106-110). Dr. Owens explained, "this has been the pattern that has developed and progressed through out [appellant's] life, even in childhood" (J. A. 109). Nevertheless, the doctor found no symptoms of abnormality existing in appellant and concluded he was without mental disorder, free of emotional disturbance (J. A. 106) and was of sound mind (J. A. 110).

Permitted to reopen his case after the Government closed, appellant called Dr. Winfred Overholser, superintendent of St. Elizabeth's Hospital, and recalled appellant's brother, Jerome Niport. Dr. Overholser testified that Dr. Owens "is one of our very valuable" psychiatrists (J. A. 122) who is entitled to his own expert opinion (J. A. 128, 132). The Superintendent further testified that "we have a high regard" for the psychiatric ability and opinion of Dr. Owens (J. A. 134). Informed of Dr. Owens' opinion that appellant was devoid of mental disorder and that at the time of the crime appellant was not suffering from a mental disease or defect, the Superintendent testified that such an opinion was not a *contradiction* of the conference report as expressed in the March 21, 1958, letter to the District Court (J. A. 3-4; 134). As stated in the letter, petitioner's muteness at the conference was due only to appellant's willful conduct, which prevented the staff conferees from determining appellant's competency (J. A. 132-133). Or, in other words, the conferees collectively had insufficient information from appellant and therefore did not care to express an opinion (J. A. 129, 136).

Corroborating the testimony of Dr. Owens, the Superintendent testified that masochism is a "trait" which, standing alone, is not indicative of the existence of a mental disorder (J. A. 131). It may be, however, a symptom of a neurosis or psychosis (J. A. 130).

Jerome Niport denied that he had told Dr. Owens that the former was of the opinion that appellant's refusal to cooperate was not connected with mental illness, but was due to his brother's general behavior of pouting when his demands were not met (J. A. 142).

STATUTES INVOLVED

Title 22, Section 2901, District of Columbia Code (1951) provides:

Robbery.—Whoever by force or violence, whether against resistance or by sudden or stealthy seizure of snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

Title 22, Section 3204, District of Columbia Code (1951, as amended, Supp. VI), provides:

Carrying concealed weapons.—No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years.

SUMMARY OF ARGUMENT

I

Major conflict in psychiatric testimony presented an issue of credibility properly submitted to the jury. The verdict, being in accord with the testimony of one of the psychiatrists, which is corroborated by lay testimony more than ordinarily important, does not constitute arbitrary disregard for expert testimony.

II

Psychiatric evidence adduced in rebuttal to appellant's defense of insanity was presented through a competent and qualified psychiatrist. The Government was not required to tender the witness's name prior to trial of appellant's non-capital offenses.

III

The trial court's instructions with respect to lay testimony and opinion, introduced in rebuttal to the defense of insanity, were full and complete. The guide posts established by this Court are sufficient to insure that under *Durham*, the persons whose crimes are the product of mental illness will receive treatment and those who are criminally responsible will receive their just punishment. Hence, there is no need to extend cautionary instructions applicable only to oral confessions, informants and accomplices to the lay testimony of sanity in the instant case, merely because it conflicts with psychiatric testimony.

IV

The trial court, as reflected by the record, acted impartially with respect to interrogation, comments and rulings during the testimony of three psychiatrists. The record does not support a contention that the trial court was biased and intentionally sought to bolster the Government's case.

ARGUMENT

I. Ample evidence properly admitted warranted the finding of sanity

Appellant contends that reasonable jurymen could not conclude beyond a reasonable doubt that his crimes were not the product of mental illness (Br. 6). The Government's position is that the issue of appellant's criminal responsibility for his crimes was properly submitted to the jury. Ample competent evidence supports their moral conviction.

It is well established that "each case must be decided upon its own facts. No uniform legal principle is available to lead

to like appraisal of different factual situations." *Douglas v. United States*, 99 U. S. App. D. C. 232, 239, 239 F. 2d 52 (1956). It is equally clear that sufficiency of evidence for submission to the jury must be decided from the testimony on both sides, and the trier of fact must consider "the whole evidence." *Durham v. United States*, 94 U. S. App. D. C. 228, 235, 214 F. 2d 862 (1954). This duty of the jury necessarily includes, among others, complete consideration of the expert opinion given by appellant's retained psychiatrist, as well as the reasons for his conclusion. The point was made crystal clear in *Carter v. United States*,¹⁷ wherein after noting "the chief functions of the expert witness," the Court declared (102 U. S. App. D. C. at 236):

"The chief value of an expert's testimony in this field, as in all other fields, rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion; in the explanation of the disease and its dynamics, that is, how it occurred, developed, and affected the mental and emotional processes of the defendant; it does not lie in his mere expression of conclusion. The ultimate inferences *vel non* of relationship, of cause and effect, are for the trier of the facts."

The determination of credibility and weight of the evidence reposed in the trier of fact requires that the aforementioned *Carter* doctrine be applied to testimony of defense psychiatrists, notwithstanding the Government has the burden of proving the issue of sanity beyond a reasonable doubt.¹⁸

As detailed in the counterstatement Dr. Miller, appellant's retained psychiatrist, testified that appellant suffered from

¹⁷ 102 U. S. App. D. C. 227, 252 F. 2d 608 (1957).

¹⁸ See *Bell v. United States*, 93 U. S. App. D. C. 173, 210 F. 2d 711 (1953), *cert. denied*, 347 U. S. 956 wherein the jury convicted upon lay testimony notwithstanding psychiatric testimony for the defense. See also *per curiam* affirmance of a similar factual situation briefed in *Thomas v. United States*, — U. S. App. D. C. —, — F. 2d — (No. 14286, decided June 24, 1958) and *Kelley v. United States*, 99 U. S. App. D. C. 13, 236 F. 2d 746 (1956), *rev'd. on other grounds*. For the necessity of weighing conflicting psychiatric testimony presented by the defense, see the facts briefed in *Perry v. United States*, — U. S. App. D. C. —, — F. 2d — (No. 14356, decided June 26, 1958).

"masochistic neurosis" and that the disorder produced the crimes. It was not until cross-examination that Dr. Miller testified that at the time of the crimes appellant suffered temporary insanity; that he could not distinguish right from wrong and that he acted under an irresistible impulse. When questioned further, it was not until redirect examination that Dr. Miller testified appellant was a "sadistic masochistic personality."

Bearing critically upon the probative value of Dr. Miller's expert opinion is his reasons therefor. The chiefly autobiographical account of appellant's condition tended to prove that appellant suffered no mental disorder whatsoever. Giving credence to Dr. Miller's testimony that appellant *consciously* sought revenge upon his family and deceased father, such a theory is inconsistent with his basic psychiatric opinion—that appellant acted unconsciously (J. A. 54, 57, 58). Moreover, the latter inconsistency is further emphasized by appellant's expression to his mother following his comparatively recent parole, when he stated (J. A. 57-58):

I told mother then by not helping me financially and not trusting me, severely curtailing my freedom, you are forcing me to go bad.

From this type of testimony it is not unreasonable for a jury to conclude that appellant was free from mental disease at the time of his crimes, or if a mental disease existed, such was not the product of his crimes. Especially is this true when Dr. Miller's *objective* evaluation shows appellant to have been an intelligent man, possessed of good memory and without psychosis.

Similarly, the testimony of appellant's brother as referenced in the counterstatement, supports a finding that appellant was without mental disorder; that he grew up as a "mischievous" boy who despite his exceptional circumstances and opportunities catered to undesirable company, preferred a shiftless life, and as a man went on a "holdup spree," with a "gang," which practically covered "the whole eastern part of the United

States."¹⁹ Reasonable men could well conclude that appellant suffered no mental disorder at the time of his crimes, but that he merely lacked "responsibility and discipline"—the reason why appellant's parents signed for his enlistment in the Air Force.

Against this background of testimony adduced by the defense, patently not from a disinterested psychiatrist or layman, and which is not assisted by an adjudication of unsoundness of mind,²⁰ the value of lay testimony adduced by the Government must be appraised upon these "different factual situations."²¹ Especially should this hold true when, because of the apparently contradictory reasons upon which the expert opinion is based, appellant did not present a "substantial showing of insanity."²² Thus, lay testimony of the victim is probative evidence of appellant's conscious conduct to get money, if—as he impliedly threatened his mother—he had "to go bad" doing so.²³ It is relevant to appellant's theories of "temporary insanity," irresistible impulse and the "McNaughten" theory, which Dr. Miller belatedly testified were the causative factors of appellant's crimes.²⁴

¹⁹ The brother's further testimony that appellant was always provided for and never wanted for anything during the life of their father, as well as the acts of appellant's mother and brothers in seeking to obtain suspended sentences in four of appellant's felonies committed during the "spree" with his gang is inconsistent with the rudimentary opinion of Dr. Miller that appellant was unloved by his family. The evidence also tended to prove that appellant's family attempted to guard and protect his childhood, supervise and encourage his education and bestow business opportunities—all of which are indicative of love. Such testimony also tends to contradict testimony of Dr. Miller that during appellant's youth and adult life he was a victim of deprivations.

²⁰ Cf. *Douglas v. United States*, *supra*, 99 U. S. App. D. C. at 239.

²¹ Id. See also *Wright v. United States*, 102 U. S. App. D. C. 36, 39, 250 F. 2d 4 (1957).

²² Cf. *Wright v. United States*, *supra*.

²³ Similarly, appellant's normal behavior witnessed by four officers a few days after his crimes is consistent with his conscious conduct on the date of the crimes.

²⁴ Although lay testimony was held insufficient to prove sanity beyond a reasonable doubt in *Fielding v. United States*, 10 U. S. App. D. C., 167, 251, F. 2d 878 (1957), *supra*, and *Douglas v. United States*, *supra*, the records of each case reflect that countervailing psychiatric expert testimony was substantial.

Significantly, warranting the finding of sanity is the unequivocal testimony of Dr. Owens. Diametrically opposed to the expert psychiatric testimony of Dr. Miller, Dr. Owens testified that appellant was free of mental disorder, specifically at the time of the crimes. The conflict in expert testimony thus engendered was further emphasized by Dr. Owens' testimony that "masochistic neurosis" as diagnosed by Dr. Miller is not listed in the American Psychiatric Association Manual. This fact remains uncontradicted in the record. To further emphasize the conflict, Dr. Overholser when called in to rebut the Government's proof, corroborated Dr. Owens' with respect to the definition and nature of "masochism."²⁵

Contrary to appellant's contention (Br. 7) Dr. Owens is patently a qualified expert witness. Dr. Owens' testimony conforms to the guide laid down by this court in *Carter v. United States*, *supra*. Moreover, the testimony of Dr. Overholser, appellant's expert witness, belies his contention (J. A. 122, 128, 132, 134).²⁶ In any event, *Sher v. DeHaven*²⁷ precludes such a contention.

Since a conflict between unanimous psychiatric testimony and contrary lay testimony may warrant submission of the issue to the jury,²⁸ there is a stronger reason for warranting submission where, as here, there is conflict in the expert testimony adduced by the defense. *Douglas supra*, counsels that disregard of conflicting expert testimony is clearly within the

²⁵ Neither Dr. Owens nor Dr. Overholser agreed with Dr. Miller's initial testimony that "masochistic means to hurt self in order to hurt somebody else."

²⁶ This is equally true of appellant's contention (Br. 7, 9) that Dr. Owens' testimony is contrary to the March 21, 1958 letter to the District Court. The record reflects otherwise (J. A. 134).

²⁷ 91 U. S. App. D. C. 257, 199 F. 2d 777 (1952). There where a general practitioner was permitted to express an expert opinion on a specialized matter, this Court held (91 U. S. App. D. C. 262): "A physician is not incompetent to testify as an expert merely because he is not a specialist in the particular field of which he speaks." (See the authorities collected in 20 Am. Jur. p. 727.) Whether he is qualified to express an opinion on a particular subject is for the trial judge in his discretion to decide. Ordinarily his decision will not be disturbed on appeal. *Pollard v. Hawfield*, 1948, 83 U. S. App. D. C. 374, 170 F. 2d 170.

²⁸ *Bell v. United States*, 93 U. S. App. D. C. 173, 210 F. 2d 711 (1953), *cert. denied*, 347 U. S. 956. (See also cases cited, *infra*, footnote 18.)

province of the jury. The doctrine only forbids arbitrariness. It is significant that in distinguishing *Holloway v. United States*²⁹ from the arbitrary action by the jury in *Douglas*, the Court reiterated the principle that a verdict of guilty should not be disturbed merely because contrary to expert psychiatric opinion.

In the instant case, the jury's conviction of sanity beyond a reasonable doubt is warranted by the testimony of Dr. Owens, as corroborated by lay testimony which, because of appellant's chiefly autobiographical account of insanity, is more than ordinarily important. There was here no arbitrary disregard of expert testimony. It is therefore submitted that all reasonable minds would not agree that a reasonable doubt was created by the medical testimony and therefore the verdict must stand. *Curley v. United States*, 81 U. S. App. D. C. 389, 160 F. 2d 229 (1947), *cert. denied*, 331 U. S. 837.

II. The prosecution is devoid of improper conduct in presenting rebuttal psychiatric testimony

Appellant contends that he had a right to rely upon the letter from St. Elizabeths Hospital, dated March 21, 1958, in which the District Court was advised that "no valid opinion" could be reached as to appellant's mental condition or competency to stand trial (Br. 8), and that the expert testimony of Dr. David Owens was inconsistent with "the official staff opinion" (Br. 9). Appellant urges that he was prejudiced by this "highly improper tactics of the prosecution" (Br. 9).

The record reflects that the letter referred to was sent to the court as a result of appellant's conduct on March 18, 1958, when appellant stubbornly refused to cooperate in his examination by a staff of psychiatrists³⁰ (J. A. 3-4, 93, 132-133; R. 344). The letter represented a collective view of the psychiatrists (J. A. 132, 134, 136). Significantly, Dr. Owens was the only psychiatrist who was principally responsible for study and

²⁹ 80 U. S. App. D. C. 3, 148 F. 2d 665 (1945).

³⁰ The record reflects that appellant was cooperative with his retained psychiatrist on March 7th, 14th and 24th—thus *after* his deliberate refusal before the staff conference (J. A. 53).

observation of appellant, from the date of his admission on February 24th to the date of discharge on April 3, 1958) (J. A. 84, 93, 1932). Therefore, Dr. Owens was the psychiatrist most familiar with appellant's condition (J. A. 92, 132) and was able to compile a case history of appellant (J. A. 84-85, 88, 111, 113, 133-134) upon which he could predicate an expert opinion (J. A. 88, 99, 101, 106, 113, 116).

Appellant's witness, Dr. Overholser, testified that Dr. Owens is a very valuable and qualified psychiatrist, entitled to his own expert opinion (J. A. 128, 132, 134). Dr. Overholser further testified—and herein lies the fallacy in the crux of appellant's contention—that there is *no contradiction* between the expert opinion expressed by Dr. Owens and the *absence of an opinion* collectively expressed by the conference (J. A. 134-136).

Assuming, *arguendo*, appellant had a right to rely upon "the hospital opinion", the "opinion" was fully brought to the attention of the jury. The record reflects that it was not an opinion however, but the absence thereof. Appellant cites no authority for the proposition that the absence of an opinion from a collective source precludes testimony from a qualified expert who did not agree with the collective opinion. As Dr. Overholser testified, it is not unusual for psychiatrists, whether or not at St. Elizabeths Hospital to disagree (J. A. 132). *Wright v. United States, supra*, is a classic example.

The record does not warrant the contention that the Government secretly switched tactics or used highly improper tactics (J. A. 9). If appellant seriously felt he was unduly prejudiced—other than by the convincing testimony of Dr. Owens—he could have sought a continuance to present whatever additional evidence he desired. No such attempt was made, nor did appellant apprise the trial court of having planned and abandoned "cumulative" evidence.

Appellant's request for a forthwith subpoena for Dr. Overholser and subpoena *decus tecum* for the medical records were granted. It is unreasonable to believe that any other similar requests for impeachment or discovery would have been denied. Most significant is the fact that the trial court exercised its discretion in permitting the expert testimony of Dr. Owens.

The exercise of such a discretion is not ordinarily disturbed on appeal. *Sher v. De Haven, supra*.

Finally, 18 U. S. C. § 3432 requires that "a person charged with treason or other capital offense," shall be furnished, among other things, a list of the witnesses. Congress has not extended the application of this statute to any other crimes. Decades ago, when rejecting a similar contention as here made, it was held that the doctrine of "expressio unius est exclusio alterius" clearly applies to crimes not listed in the predecessor of 18 U. S. C. § 3432. *Baillet v. United States*, 129 Fed. 689 (1904).

Moreover, the Supreme Court held prior to *Baillet*, that even in a capital case, Rev. Stat. § 1033 — the predecessor of 18 U. S. C. § 3432 — did not apply to *purely rebuttal* testimony. *Goldsby v. United States*, 160 U.S. 70, 76 (1895). See *Gordon v. United States*, 53 App. D. C. 154, 289 Fed. 552 (1923), wherein this Court held that *Goldsby* had not been reversed or modified and stated the law of this jurisdiction.

This doctrine of "expressio unius est exclusio alterius," well established under Rev. Stat. § 1033 is still in effect under 18 U. S. C. § 3432. *United States v. Brandt*, 139 F. Supp. 367, 372 (N. D. Ohio 1955); *United States v. Stein*, 18 F. R. D. 17, 19 (S. D. N. Y. 1955). As the court said in *Stein*, federal courts "have refused to extend this right to other categories of defendants * * * See also Pre-Trial Disclosures in Criminal Cases, 60 Yale Law Review 626, 631."

Since appellant's crimes were not capital cases and the Government's evidence presented through Dr. Owens was purely rebuttal, it is clear, for either reason, the Government is innocent of improper tactics. There is certainly no abuse in the exercise of the trial court's discretion. *Sher v. DeHaven, supra*.

III. The instructions were fair, complete and proper

Appellant contends that the trial court erred in refusing to instruct the jury "that although a non-expert witness testifies that he has never observed an abnormal act on the part of the accused, this testimony is of no value unless that witness has

a prolonged and intimate contact with the accused" (Br. 15). Contrary to this contention of error the record reflects that during a pre-instruction bench conference the court denied appellant's request in form but granted it in substance. There was no objection to the substance indicated (J. A. 143). Accordingly, the court gave the following pertinent instruction (J. A. 151-152):

You have also heard the testimony of certain lay persons with respect to the defendant's mental condition. When the issue is one of sanity or insanity opinion testimony of lay witnesses may be received in evidence and considered by the jury.

In weighing the testimony of these lay persons it is proper for you to consider the surrounding circumstances as to each witness, his opportunity of knowing about the matters which he has testified, to his willingness to expound fairly in reference to his knowledge and the basis for his conclusions and the fact that he is a lay person.

In weighing both lay and expert testimony as to the Defendant's mental condition you will, of course, consider the extent of the witness's observation of the Defendant or observations and the nature of the witness's contact or contacts with the Defendant.

While you should consider the opinions of both lay and expert witnesses, as I have told you, you are not bound to follow the conclusions of any one of them because in the final analysis the issue of sanity or lack of sanity, as in all other issues of fact, you are the judges thereof, you are the sole judges.

After the instruction was given appellant indicated his satisfaction by not objecting. Therefore, the issue is not properly before the Court. Rule 30, F. R. Cr. P.; see also *Villaroman v. United States*, 87 U. S. App. D. C. 240, 241, 184 F. 2d 261 (1950), *reversed on other grounds*; *Norman v. United States*, 20 App. D. C. 494, 497 (1902). In any event, the instruction, as given, properly submitted the issue to the jury upon the

particular facts of the instant case.³¹ Cf. *Douglas v. United States, supra*. Cf. also *Heideman v. United States*, — U. S. App. D. C. —, — F. 2d — (No 14414, decided September 25, 1958).

Appellant's final contention of reversible error with respect to instructions concerns denial of a requested instruction which sought to apply the cautionary instruction applicable only to oral confessions, testimony of informants and accomplices to the portion of the lay testimony presented by the Government in the instant case which is contrary to the defense's psychiatric testimony. At the outset it is clear that the inherently unreliable nature of oral confessions, testimony of informants and accomplices does not exist with respect to lay testimony offered upon the issue of sanity. This is so because these lay witnesses were not parties intimately interested in the litigation. It is equally clear that such an instruction if applied to cases involving the issue of sanity would have a tendency to usurp the jury's function of weighing the expert opinion and the reasons upon which such opinion is based. This would be contrary to the guides laid down by the Court in *Carter v. United States, supra*.³²

Obviously, appellant's requested instruction is designed to virtually exclude and mechanically minimize the testimony of lay witnesses offered by the Government. As previously noted, this Court declared in *Douglas, supra*, "Each case must be decided upon its own facts. No uniform legal principle is available to lend to a like appraisal of different factual situations." 99 U. S. App. D. C. at 239. The instructions as given upon the facts of the instant case properly informed the jury-men of their duties.

It is not amiss to note that such a doctrine as propounded would necessarily be applicable in cases where the issue of insanity is introduced solely by defendant's lay testimony. It is not inconceivable that juries would be prone to give little consideration to such a defense when controverted by one Government psychiatrist. This effect or result would appar-

³¹ See appellee's brief, *infra*, pp. 16-17.

³² See the *Carter* quotation at p. 15 of appellee's brief.

ently be inconsistent with the doctrine that the Court's "collective conscience does not allow punishment where it cannot impose blame." *Holloway v. United States, supra*.

It is, therefore, submitted that the existing guide posts already established are sufficient to insure that under *Durham*, the mentally ill whose crimes are the product of their illness will receive treatment, and the criminally responsible their just punishment.

It is clear that the issues in the instant case were submitted to the jury under full and proper instructions.

IV. The court was impartial in its interrogation, comments and rulings

Appellant cites several instances of interrogation, comments and rulings of the trial court and contends that the court was partial in an attempt to buttress the Government's case (Br. 10-13). The record does not substantiate such a conclusion.

Out of the several references cited, the record reflects that appellant made but one objection (Br. 13) upon a record replete with objections made whenever appellant deemed such was warranted by the testimony or circumstances. This fact alone supports a conclusion that during the occasions of the references cited appellant did not consider the court's alleged conduct as partial. Nor was this particular contention made in support of the only objection to the references (J. A. 127).

Appellant's opening statement appraised the court and jury that the sole defense was insanity (R. 104-105). The record reflects that three psychiatrists testified and that the court sought to elucidate and clarify the testimony of each, without partiality (J. A. 47-72; 82-118; 119-138). *Burgman v. United States*, 88 U. S. App. D. C. 184, 188 F. 2d 637 (1951) endorses the court's actions. There, where the record showed that the trial court had intervened during the testimony of psychiatrists for the Government and for the defense, this Court held no error existed, and declared the following principle (88 U. S. App. D. C. at 188):

* * * such intervention is not in itself error. Quite the contrary, when the issue which the jury must determine

involves the technical terms and concepts of expert psychiatric testimony, *a serious responsibility rests upon the trial judge to make as certain as possible that the testimony is clear and complete.* Of course, primary responsibility in this regard rests upon counsel, but *a sound discretion to that end rests also upon the judge.* The possibility of pure jury speculation in this field is so great that *the trial judge must be unusually watchful in respect to it.* The criterion by which such intervention must be judged for error is the same as that used in other respects. The criterion is the impartiality of the action and attitude. The judge may not be partial in this respect any more than he may be so in any other. [Emphasis supplied.]

A second principle disclosed in *United States v. Glasser*³³ is equally apposite here. There, where "considerable criticism" was "heaped" upon the trial court, the following counsel was given (116 F. 2d at 704):

"An appellate court should be slow to reverse a case for the alleged misconduct of the trial court, unless it appears that the conduct complained of was *intended or calculated to disparage* the defendant in the eyes of the jury *and to prevent the jury from exercising an impartial judgment upon the merits.* *Goldstein v. United States*, 8 Cir., 63 F. 2d 609, 613." [Emphasis supplied.]

Adopting the same view, the Supreme Court counseled, 315 U. S. at 83:

"We must guard against the magnification on appeal of instances which were of little importance in their setting."

In view of the foregoing principles, it is submitted that the court acted without bias and in no way prejudiced the substantial rights of appellant.

³³ 116 F. 2d 690 (2nd Cir. 1941) reversed in part on other grounds, sub nom, *Glasser v. United States*, 315 U. S. 60 (1942).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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